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Current Topics.

The Crown and Statute Law.

CAN THE CROWN take advantage of a statute by which it is not bound? Lord Justice SCRUTTON has cast serious doubt on the correctness of the principle, which appears to have been universally recognised for more than three centuries, to the effect that, although the Crown is not bound by a statute, it may nevertheless take advantage of it. Authority for this principle, such as there is, dates back to 1616, to a passage which is to be found in the *Magdalen College Case*, 1616, 11 Co. Rep. 66, *b*; 68, *a*, *b*, which is as follows: "Be the statute affirmative or be it negative, which is stronger, it shall not bind the King unless he is specially named, *but he shall take benefit of a statute, although he be not named* . . . also the Statutes of Limitation, scil., of Merton, cap. 8, W.1, c. 3, and 32 H. 8, cap. 2, have never bound the King." SCRUTTON, L.J., however, in *Cayzer, Irvine & Co., Ltd.* v. *Board of Trade*, 1926, W.N. 260, in which the question was raised, *inter alia*, whether the Crown could rely on the Statutes of Limitation, seems to have inclined to the view urged by Sir JOHN SIMON in that case, that the above principle enunciated in the *Magdalen College Case* could not be regarded in any sense as authoritative. SCRUTTON, L.J., thus says, in his judgment, as reported in the *Weekly Notes*: "With regard to the question, which was of great historical interest and importance, whether the Crown could successfully say, 'We are not bound by the statute, but we are at liberty to take advantage of it,' there was undoubtedly a long series of statements in text-books repeating one another for some centuries; but there was something to be said for the argument put forward by counsel for the appellants, that those statements started with a passage in an unsuccessful argument of a law officer, which was not even relevant to the case before the court [i.e., the *Magdalen College Case, supra*], but which had been taken out by a text-writer and repeated for centuries until it was believed that it must have some foundation . . . The question for this confidently repeated statement of the text-writers would need careful consideration when it came up in a case in which it was material to decide it." As, however, the principle in question has been accepted as good law during all these centuries and has thus become firmly rooted as it were in our legal system, it would hardly be possible for a court of law to upset it. The matter, however, is one which, in the event of any legislation being introduced for the purpose of assimilating Crown procedure with ordinary procedure, might usefully be dealt with at the same time.

Administration where Infant Interested: Grant to Single Administrator.

THE Judicature Act, 1925, s. 160 (1), enacts, *inter alia*, that probate or administration is not to be granted if there is a minority or if a life interest arises under the will or intestacy, except to a trust corporation, with or without an individual, or to not less than two individuals. Section 162 (1), *ibid.*, provides that in granting administration the Court is to have regard to the rights of all persons interested in the deceased's estate, provided, however, that in the case of a complete intestacy administration is, unless by reason of the insolvency of the estate or other special circumstances the Court thinks it expedient to grant administration to some other person, to be granted to some one or more persons interested in the residuary estate. In *Re Herbert*, 1926, P. 109, an interesting point on the construction of these sections was raised on motion for a grant of administration of the estate of one H., who died in 1926, leaving a widow and an infant child. The estate was insolvent, and the widow having disclaimed for herself and her child, application for administration was made by an unsecured creditor. One of the persons interested under the intestacy was an infant, and the question raised was whether or not this fact necessitated a grant to a trust corporation, with or without an individual or two individuals. Lord MERRIVALE, P., decided that s. 160 (1) must be read subject to the modification contained in s. 162 (1), and that the special circumstances existing in the case as the result of the insolvency of the deceased's estate gave the Court a discretion to grant administration to some other person, i.e., to a single administrator.

Extra-Judicial Utterances from the Bench.

IN HIS essay "Of Judicature," BACON, after declaring that "an over-speaking judge is no well-tuned cymbal," proceeded to lay it down that the functions of a judge in hearing causes are four: To direct the evidence; to moderate length, repetition or impertinency of speech; to recapitulate, select and collate the material points of that which hath been said; and to give the rule or sentence. Whatsoever is above these is too much and proceedeth either of glory and willingness to speak, or of impatience to hear; or of shortness of memory; or of want of a staid and equal attention. It is the glory of the English bench that its members

have kept these words of BACON steadily before their eyes, and have rarely, in the words of the Lord Mayor of Birmingham, delivered from the judgment seat "lectures on matters extraneous to the legal issues." In the past, a judge, in addressing the grand jury, occasionally permitted himself a little latitude while he discoursed "on the state of the country," but even this comparatively mild departure from the normal attitude of judicial reserve has now become obsolete, and judges have for long refrained from travelling outside their proper domain. An intelligent and critical visitor to our courts may possibly think that occasionally this or that judge interrupts the argument of counsel more than may be necessary, and think him, on that account, "no well-tuned cymbal," but rarely, if ever, will the critic, strain his ears as he may, hear anything from the bench that is not germane to the matter under discussion. An anecdote which comes down to us from the days of Mr. Justice CRESSWELL well illustrates the restraint and self-effacement so characteristic of the English judge in the discharge of his official duties. On one occasion a murmur of applause came from the jury box while Mr. Justice CRESSWELL was addressing its occupants. "Gentlemen," said the judge, "you will forgive me. I daresay you meant it very kindly; but, believe me, the administration of justice is in great danger when applause in court becomes grateful to a judge's ears."

The Bench and Literature.

READERS OF BOSWELL may recall an interesting discussion he reports on lawyers and their knowledge of extra-professional subjects. Sir ALEXANDER MACDONALD having expressed the opinion that almost all great lawyers who had written upon law had known nothing but law, JOHNSON took the contrary view and instanced HALE and SELDEN and BACON and MANSFIELD as men who were great lawyers but possessed a wide knowledge of literature. Since the date of that conversation, the English bench has had numerous illustrious representatives who have shed a lustre, not only on legal, but on what was at one time called "polite," learning. Everyone who has dipped into CAMPBELL'S Lives of the Chancellors or of the Chief Justices cannot have failed to recognise the literary skill with which they are written, whatever he may think of the judgments passed upon the various eminent men to whom he is introduced—judgments, some of which go far to justify the celebrated witticism of Sir CHARLES WETHERELL, who declared that CAMPBELL had added a new terror to death. But, as we all know, CAMPBELL is not our only modern Lord Chancellor who has cultivated *belles-lettres*. During the last few years Lord BIRKENHEAD has written several volumes with a skill and literary grace no whit behind that of his predecessor on the Woolsack. Further, no list of literary judges would be complete which omitted mention of Lord BOWEN and Lord DARLING. The former's rendering of "Virgil" was at once recognised by competent critics as possessed of a solemn grandeur and pathos; while Lord DARLING'S graceful verses have made a wide appeal to readers who are not wedded to literature of the kind typified by white and red books. What of the present High Court bench? In Mr. Justice MACKINNON we have one who worthily maintains its literary traditions. All lawyers know of his erudite labours in connexion with successive editions of "Scrutton on Charter-parties"; but more than once of late he has shown us that his literary bent is not merely professional. A few months ago he wrote an amusing paper on "The Chronology of Pickwick," and now, to the October number of the *Cornhill Magazine*, he contributes an intesting article on "Samuel Johnson, Undergraduate," in which, from BOSWELL and other sources, he learnedly reconstructs the Oxford of JOHNSON'S day. As becomes the holder of his high office, he is, although of Oxford, judicial in his references to the sister seat of learning, but nevertheless he has slipped in the following amusing footnote: "At a meeting of the Johnson Club in December, 1922, Mr. ASQUITH, as an honoured guest, read us a paper. In the subsequent discussion, Mr. BIRRELL speculated upon a meeting between JOHNSON and Mr. ASQUITH and wondered what they would have talked about. When he came to reply, Mr. ASQUITH said that he felt sure that before long JOHNSON and he would have congratulated one another upon having escaped 'the irreparable misfortune of being educated at Cambridge?'"

Appointment of Trustees: Can Appointor appoint himself?

A CORRESPONDENT raises (see p. 1000, *infra*), the point whether or not in an appointment of new trustees in place of the Public Trustee under the L.P.A., 1925, the appointors can appoint themselves. It may be noted that the new Acts contain at least three differently worded provisions relating to this aspect of the appointment of trustees.

(i) The T.A., 1925, s. 34 (1) enables the appointor to appoint "one or more other persons (*whether or not being the persons exercising the power*) to be a new trustee"; this, of course, means that donees of a power to appoint trustees can appoint themselves as *new* trustees.

(ii) *Ib.*, sub-s. (6) only gives the power to appoint "*another person or other persons* to be an additional trustee or additional trustees." It is clear from this that the rule applied in *Re Sampson*, 1906, 1 Ch. 435, applies to appointments made under this sub-section, and that accordingly the donee of the power cannot appoint himself an *additional* trustee.

(iii) The powers of appointing new trustees conferred by the 1st Sched. to the L.P.A., 1925 (see *ib.*, Pt. III, paras. 3 and 4: Pt. IV, para. 1), are given to persons simply to "appoint new trustees in place of the Public Trustee," or "to appoint a new trustee in place of the infant." It is clear, therefore, that in these cases the rule adopted by BUCKLEY, J., in *Montefiore* v. *Guedalla*, 1903, 2 Ch. 723, and distinguished by KEKEWICH, J., in *Re Sampson*, *supra*, applies to these provisions, and that the donees of these powers can appoint themselves trustees. "The first step," said BUCKLEY, J. (1903, 2 Ch., at p. 725), "is to look at the language of the power. Where you find that the power is to appoint some 'other' person, the question may arise whether that means some person other than the appointor. In such a case the donee of the power may not be amongst the persons capable of being appointed. But in the present case (of an express power to appoint a new trustee or trustees) the word 'other' does not appear."

Speed Limits under the Motor Car Act, 1903.

ON SEVERAL occasions recently our attention has been drawn to cases of convictions under s. 9 of the Motor Car Act, 1903. That section makes it an offence punishable on summary conviction for any person "under any circumstances [presumably even when motor bandits are being pursued by the police] to drive a motor car on a public highway at a speed exceeding twenty miles per hour." In a number of the cases which we have noticed, the driver of the car was travelling at a speed variously estimated at from twenty-five to thirty-five miles per hour, and there was no suggestion of dangerous or reckless driving. Now the fact is that the imposition of such a low limit of speed as twenty miles per hour—an imposition dating back some twenty-three years to a date when motor cars were in their infancy—tends to wholesale non-observance of the statutory rule and to the bringing about of a state of uneven administration of the law in different parts of the country. It will be recalled that a Departmental Committee was in 1922 appointed by the Minister of Transport to consider the regulations of road vehicles, and that that Committee has reported in favour of the abolition of all fixed speed limits throughout the land. Is not the time overdue when this obsolete speed limit should be entirely abolished and the offence of dangerous and reckless driving re-defined, so that speed, driving experience, conditions of the road and similar circumstances be taken into consideration as factors, and factors only, in the commission of the crime?

The Question of Extra-Territorial Rights.

By SIR THOMAS BARCLAY.
(*Former Acting-President of the Institute of International Law.*)

ALTHOUGH the Bethlen-Justh incident is not now fresh in the public mind, several significant features which it aroused are still evoking controversy. It will be recalled that a Hungarian, of the name of JUSTH, struck the Hungarian Prime Minister, then acting as official representative of his country, within the building occupied by the League of Nations at Geneva. Now according to art. 7, para. 5 of the Covenant, this building "and other property occupied by the League or its officials or by Representatives attending its meetings," is inviolable.

This provision was obviously borrowed from the existing practice as regards foreign embassies, legations, ambassadors, ministers plenipotentiary and all persons employed in or by them as such. Interpreted strictly this inviolability would merely mean that no judicial process could be served on any person within the building or within any of the offices of the League or dwellings occupied by the official representatives attending its meetings.

The English version, however, does not exactly correspond to the French and seems to be an interpretation rather than a translation. The French text says: The buildings and grounds occupied by the League for its services and meetings are inviolable. There is no reference in the French text to places occupied by members attending its meetings.

Paragraph 4 of the same article, however, declares:

> "Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

The representative of any country which is a member of the League, therefore, enjoys the immunity of a diplomatic agent. It does not, strictly speaking, follow that the buildings are extra-territorial in the sense in which an embassy or legation are so, that is to say, as forming part of the territory of the foreign state, a fiction which has passed beyond question into the customary law of nations.

It can hardly be argued that any act committed within the buildings, involving a question of penal jurisdiction, would have to be considered as having taken place on the soil of the state to which the complainant belonged, for this would imply acquiescence of the state to which the aggressor belonged. Thus far no such question has arisen. JUSTH, the aggressor in the attack on Count BETHLEN, having no official connexion with the League and belonging to the same state as the complainant, will be tried as a common law offender in a Swiss court, irrespective of the fact that the aggression took place within the building occupied by the League.

Some confusion has arisen as to the attitude of the Swiss Government on the subject.

An application was made by the Hungarian Government for the extradition of JUSTH, who had committed an offence against Hungarian fiscal law by the removal of securities out of the Hungarian jurisdiction, an offence which is not known to Swiss common law and has never been included, so far as I am aware, in any extradition treaty. The Swiss Government rightly refused to comply with the demand which could not be justified by any accepted practice.

From what I have already said, it is seen that the two offences are quite distinct, and although it has been alleged that the demand for extradition was dictated rather by political than legal considerations, it is difficult to see how either Government could have acted otherwise than it did. The question is purely a legal one and it has been dealt with thus far in accordance with accepted judicial principles.

Another point has arisen on which there is also confusion. Swiss jurists, it has been alleged, are endeavouring to influence the Swiss Government to disregard the accepted practice of inviolability of foreign embassies and legations. Who such jurists are, is not stated. Nor is it likely that the Swiss Government would assume an attitude towards foreign missions at Berne which would imply renunciation of privileges of their own missions abroad. The reasons for upholding the privileges of such missions are overwhelmingly in favour of their maintenance. Far from experience foreshadowing any abridgement of these privileges, it is rather tending to extend them to Consulates. Consuls, in fact, enjoy certain immunities already, but consulates have no ex-territorial character.

Thus, the question of the inviolability of consular archives was the subject of controversy a few years back, on the occasion of the French Consulate at Florence being invaded by the Italian authorities, and some papers, not belonging to the actual consular documents, being removed. The consuls of the different States immediately met and protested against this Act. Nevertheless correspondence between the French and Italian Governments led to no affirmation of principle.

Any change in the existing practice concerning diplomatic agents would disturb one of the few branches of International usage, about which there is practically unanimity. This unanimity in itself is a recommendation.

The ex-territoriality and immunity in question have grown out of the need of enabling governments to carry on their intercourse with the least possible friction. The existing practice of giving them the fullest possible power to exercise their functions in freedom from external obligations is not likely to be curtailed by any State, which, like Switzerland, has a direct interest in the consolidation of the law of nations as a safeguard of rights and privileges which they have no physical power to uphold.

As regards the League of Nations, the Swiss Government may have had some apprehension lest it should claim an ex-territorality over-riding the national law. But the submission of the BETHLEN-JUSTH incident to the Swiss jurisdiction ought to allay any anxiety on this score.

Is the Class of Common Carriers Closed?

THE QUESTION of a carrier's liability for damage to goods in course of transportation by him has suffered from some confusion due to the special position of one particular class of carrier—the common carrier. The ordinary carrier, known as a private carrier, is a simple bailee for hire and as such responsible only for damage to goods resulting from his negligence, subject however, to any variation of this liability by special terms in the contract of carriage. For historical reasons a common carrier is in a different position; he is an insurer of the goods which he carries or, more exactly, he is under an absolute liability to carry and deliver the goods undamaged, the only exceptions being damage arising from the acts of God and the King's enemies and from inherent vice. (See, for example, *per* ATKIN, L.J., *in G. N. Ry. Co.* v. *L. E. P. Transport Depository Limited*, 1922, 2 K.B., at p. 769). He is thus responsible for all damage arising whether from causes which he can control or from those he cannot, whether from his negligence or the negligence of his servants, or from accident, unless he has entered into a special contract excepting his liability. Not only is his liability more onerous than the private carrier's, but he is also obliged to undertake the liability as often as he is offered properly packed goods which he is in a position to carry and on which reasonable carriage has been pre-paid, and he may be sued for refusing to carry them.

Avoiding the onerous liability thus imposed by the common law is not a simple matter. In the case of the railway companies, the most important of the common carriers, the legislature has either denied the right to limit liability or has hedged the limitations with conditions. The clauses in their contracts by which other common carriers have endeavoured to limit their liabilities have been very strictly construed by the courts: "an exceptional duty is placed upon him (the common carrier) to see that his exception clause is express and unambiguous in its terms: *per* SANKEY, J., in *Turner* v. *Civil Service Supply Association*, 1925, 1 K.B., at p. 56. Thus, a contractual exemption from an enumerated form of loss or damage expressed in these terms: "the carrier will not be responsible for loss of, or damage to goods due to fire," does not protect a common carrier from liability if the loss or damage arises from the carrier's negligence, unless the term in the contract is more widely expressed and fortified with some such addition as "however caused": *Joseph Travers and Sons Limited* v. *Cooper*, 1915, 1 K.B. 73.

The guarantee of safety thus afforded to the goods of those who employ common carriers has led to several attempts by employers of carriers to enlarge the class of those who are obliged by law to shoulder the wider liability. *Primâ facie*, it should not have been difficult to fit into the class many modern carriers by road; the definition of common carrier and the extent of the variations of duties and liabilities which have been held not inconsistent with his profession do not seem to present a frame too rigid to accommodate newer methods of transport.

A common carrier was defined by SCRUTTON, L.J., as "a person who professes himself ready to carry goods for everybody": *G. N. Ry. Co.* v. *L. E. P.*, *supra*, at p. 765. To this could be added the words "at a reasonable rate": see *Belfast Ropework Co.* v. *Bushnell*, 1918, 1 K.B., at p. 212. The emphasis is on the profession; the common carrier is not bound to carry goods of any description for any person. He may limit his obligation to the carriage of a particular type of goods, or to carrying from one particular place to another; *Johnson* v. *Midland Ry. Co.*, 4 Ex. 367; or he may carry goods generally but refuse at any time to carry certain classes of goods: *Dickson* v. *G. N. Ry. Co.*, 18 Q.B.D. 176; none of these cases of restricted profession deprives him of his character of a common carrier. Further, his character is not altered because he does not ply between fixed *termini* or because he does not carry more than one person's goods at a time: *Liver Alkali Co.* v. *Johnson*, 9 Ex. 338. This was the case of a lighterman who was prepared to convey the goods of all who chose to employ him, and it was at one time thought that it established a third class of persons who were not common carriers but had the liability of such. The difficulty of describing them as common carriers lay in that admittedly they were not liable to an action for refusing the use of lighters when required. But the Court of Appeal took the view in *Nugent* v. *Smith*, 1 C.P.D. 423, that the effect of the decision in the *Liver Alkali Case* was that the lighterman was a common carrier, and the distinction between being a common carrier and assuming the liability of a common carrier has been since dismissed as a mere matter of words: *Watkins* v. *Cottell*, 1916, 1 K.B. 10; *G. N. Ry. Co.* v. *L. E. P.*, *supra*, in spite of the difficulty presented by the freedom from liability to be sued for refusing to carry.

In the light of these distinguishing characteristics of a common carrier there would appear to be no insuperable difficulty in attaching the description to carriers by road—haulage contractors and furniture removers. It is notorious that they are, in general, prepared to carry, as their advertisements often advise, "from anywhere to anywhere," and that they will do so at definite or ascertainable rates which are generally not unreasonable, and thus they would seem to fall naturally into the class of common carriers. But the courts of recent years have been as reluctant to admit new-comers into the class as they have been to allow its admitted members to escape from it.

Watkin's Case was an attempt to apply the *Liver Alkali Case* to a carrier by land, to treat the law as a science, by bringing a furniture remover into the supposed third class of carriers; but, as all distinction between that class and common carriers was dismissed, the decision was given on the basis that a furniture remover was not a person ready to carry the goods of anyone at a specified rate, i.e., was not a common carrier, because there was a stipulation that he should inspect the goods before undertaking to carry them. It may be submitted that a contract for furniture removing really embodies two contracts; one for the removing the goods from house to wagon and *vice versa* and one for carriage of the packed goods from one place to another. The first calls for inspection and for an arrangement of terms that will vary with many factors such as the accessibility of the house and the amount of dismantling which may be necessary; the second would be on a fixed scale varying only with the distance and would seem to bring the furniture remover, *quâ* the carriage, into the class of common carrier. It has been held that the fact that a common charge is made for carriage and another duty (e.g., warehousing) is not necessarily inconsistent with a common carrier's liability: *Tavaco* v. *Timothy*, Cab. & E. 1. But the attempt to bring furniture removers into the class failed in *Electric Supply Stores* v. *Gaywood*, 100 L.T. 855 and *Watkin's Case*, and has been abandoned in recent cases. See *Turner* v. *Civil Service Supply Association*, 1925 1 K.B. 50; *Fagan* v. *Green & Edwards, Ltd.*, *ibid.*, 102.

Haulage contractors, prepared to carry without preliminary inspection, have also been fortunate enough to avoid the onerous description of common carriers. In the *Belfast Ropework Case*, it was found that the defendant was prepared to carry for all who chose to employ him, and to carry at a reasonable rate, but that it could be inferred from his course of business that he reserved to himself the right to accept or reject offers of goods according to the attractiveness or otherwise of the offer and quite apart from his ability or inability to carry them, and this last factor was held sufficient to show that he was not a common carrier.

The question of whether in any particular case a carrier is a common carrier is a question of fact, so that it cannot be definitely asserted that the class of common carriers is closed. But the tendency of recent decisions to restrict the class, and the ease with which carriers by modern methods but under strikingly similar conditions to the older carrier, have escaped the more onerous liability lead to the fair conclusion that any extension of the class of common carriers is highly improbable.

H.

A Conveyancer's Diary.

Conveyance of Charity Land by Managing Trustees.

A provision of the S.L.A., 1925, which calls for examination is that which is contained in s. 29, *ib.* This desirable provision strikes one as not strictly falling within the scheme of the Act; it was probably incorporated therein for the purpose of showing that charity land, though held by two or more trustees as joint tenants, was not to be subjected to a trust for sale by virtue of L.P.A., 1925, s. 36 (1). The general idea is clear, namely, that tenants for life, trustees for sale (*ib.* s. 38) and personal representatives (A.E.A., 1925, s. 39), should have the like powers of dealing with land, the S.L.A., for this purpose, being treated as a General Powers Act. Why, then, should charity trustees be left out? The section (29) which we will now discuss, says that they are not to be left out of this general scheme authorising reasonable transactions to be effected in regard to every acre of land in England and Wales, however held. The section, however, imposes certain safeguards on the exercise of the powers.

Sub-section (1) in effect enacts that for certain purposes all land "vested or to be vested in trustees on or for charitable, ecclesiastical or public trusts or purposes" is to be deemed to be settled land, the instrument creating the trust or under which the trust is administered, constituting the settlement. The managing trustees without becoming statutory owners are to have the powers of a tenant for life, and are also to be deemed the trustees of the settlement; but the transitional provisions of the L.P.A., 1925, 1st Sched, Pt. II, para 6 (*c*) have not divested the Official Trustee of Charity Lands by shifting to the managing trustees the legal estate in any such land: *ib.*, para. 7 (*k*).

It is to be carefully observed that only *for the purposes of s.* 29 of the S.L.A., 1925, is land held on these trusts deemed to be settled land, thus the section must be read by itself and it is important to discover at the outset what those purposes are. The most important, if not practically the sole purpose may be briefly described as that referred to in the first paragraph of sub-s. (1), namely to confer the powers of a tenant for life and the trustees of a settlement in respect to settled land on the managing trustees of land held on charitable and public trusts.

Further, sub-s. (1) makes it clear that s. 29 does not affect the mode of creation, or the administration, or the appointment or number of trustees of such trusts.

Some doubt seems to prevail in many quarters as is shown by a number of letters which have been received, and which are hereby gratefully acknowledged, as to the form which a conveyance executed under s. 29 by the managing trustees ought in practice to take.

Now, sub-s. (2) of s. 29 enacts that managing trustees can only exercise their new powers subject, in certain cases, to such consents or orders being obtained as would have been requisite to effect the like transaction before 1926. The consents and orders referred to are those which are made requisite in the case of sales, mortgages, charges or certain leases of charity land, under the Charitable Trusts Act, 1855, s. 29; those made necessary under the Board of Education Act, 1899, and the Education Act, 1921. Certain charities (including "mixed" charities, as to which see Articles in 69 Sol. J., pp. 135, 155, 170 and 188) are exempted from the restrictions as to consents under the Charitable Trusts Act, 1853, s. 62.

Sub-section (2) of s. 29 also enacts that where land is vested in the official trustee or in any other person having no powers of management, the powers are exercisable by the managing trustees, the Official Trustee or other person not being liable for carrying out the directions of the managing trustees.

Sub-section (5) also is material to this matter, for it provides that where any trustees or the majority of any set of trustees (see Charitable Trusts Act, 1869, s. 12) have power to transfer or create any legal estate, that estate is to be transferred or created by them in the names and on behalf of the persons (including the official trustee of charity lands) in whom the legal estate is vested.

It seems, therefore, from our reading of s. 29 (5) that when managing trustees or the majority of them are exercising their new powers of sale, mortgaging, charging or leasing:

(1) they must execute the conveyance in the names of the persons in whom the legal estate is vested. This can now be done under L.P.A., 1925, s. 74 (3).

(2) that the official trustee or the person in whom the legal estate is vested is not a necessary party to such conveyance. It is understood that the Charity Commissioners' view is that the Official Trustee of Charity Lands (by his corporate name) should be expressed to be a party to the conveyance, but that he should not personally execute the deed. This appears to be correct, the Official Trustee is the principal, the managing trustees, as respects the legal estate, are his statutory attorneys.

(3) the consents and orders without which certain dispositions cannot be made will continue necessary just as formerly. Thus, orders of the Charity Commissioners on the Board of Education will be necessary in many cases. Further, where a purchaser has notice that the land he is buying is held on charitable or public trusts he is bound to see that the requisite consents or orders have been obtained.

Finally it is to be observed that the draft of the conveyance need not be submitted to the Commissioners for approval on behalf of the Official Trustee, but the solicitors to the managing trustees, before approving the draft on behalf of their clients, should satisfy themselves that no personal liability will be imposed by the conveyance on the Official Trustee.

Landlord and Tenant Notebook.

Recovery of Possession by Mortgagee who has Attorned Tenant—

continued from p. 972.

Before dealing with the effect of the L.P. Acts, the confession has to be made that in writing the first part of the reply to the query, the important fact was overlooked that as the mortgage was created in May, 1924, the application of the Rent Acts to the facts considered is prevented by reason of s. 12 (4) (*c*) of the Act of 1920, which provides that the Act is not to apply "to any mortgage which is created after the passing of this Act" (i.e., 2nd July, 1920).

Hence the parts on p. 973, *supra*, which deal with the effect of the Rent Acts must not be treated as applying to the case. The other aspects of the question raised in the query, however, seem to have been sufficiently dealt with in the preceding part of this article, if taken together with the part which now follows.

Effect of L.P. Acts.

It is now necessary to see what is the effect, if any, of the Law of Property Acts. By virtue of para. 1 of Pt. VII of the L.P.A., 1925, the fee simple vested in A, by virtue of the mortgage created in May, 1924, has now been converted into a term for 3,000 years from the commencement of the mortgage, without impeachment of waste, but subject to a provision for cesser, corresponding to the right of redemption, which at such commencement was subsisting with respect to the fee simple.

While the new property legislation has made a fundamental change in the nature of the estate of the mortgagee, it has not prejudiced the rights and remedies of which the mortgagee might previously have availed himself. At any rate, as far as the right to take possession of the mortgaged property is concerned, this right is expressly preserved by s. 95 (4) of the L.P.A., 1925, which provides that: "Nothing in this Act affects prejudicially the right of a mortgagee of land whether or not his charge is secured by a legal term of years absolute to take possession of the land, but the taking of possession by the mortgagee does not convert any legal estate of the mortgagor into an equitable interest."

Procedure.

It remains now to consider the procedure that is to be followed in such a case. It has been held that an action by a mortgagee to recover possession of land from a mortgagor who has attorned tenant to him, is not an action for forfeiture, but an action for recovery of land to which Ord. 3, r. 6 and Ord. XIV may apply.

Reference on this point may be made to *Kemp* v. *Lester*, 1896, 2 K.B. 162. There a mortgage deed contained a clause by which the mortgagor attorned tenant from year to year to the mortgagee at a yearly rental payable half-yearly, and a further clause by which the mortgagee was entitled, without giving the mortgagor any previous notice, to enter and take possession of the premises. The rent being in arrear, the mortgagee commenced proceedings under Ord. XIV to recover possession. The Court of Appeal held that he was entitled to take proceedings under Ord. 3, r. 6, and Ord. XIV (i.e., by specially indorsed writ).

LAW OF PROPERTY ACTS.

POINTS IN PRACTICE.

Questions from Annual Subscribers are invited and will be answered by an eminent Conveyancer. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4. The name and address of the Subscriber must accompany all communications, which should be typewritten (or written) on one side of the paper only and be in triplicate. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post.

IMPLIED COVENANTS—CONVEYANCE OF PART OF LAND COMPRISED IN A LEASE—RENT APPORTIONED.

474. *Q.* A assigns to B and C a moiety of property leased to him subject to a ground rent of £7 5s. 4d. affecting the whole of the property, and in the assignment it is agreed that £3 12s. 8d., an equal moiety of the ground rent, should be charged exclusively upon and payable out of the property assigned in exoneration of the residue of the property comprised in the said lease, and that £3 12s. 8d., the balance of the ground rent, shall be charged upon and be payable out of the residue of the property in exoneration of the property thereby assigned, and by the assignment B and C charge the premises assigned to them with the payment of all money which may become payable by them under the covenant on their part implied therein by virtue of s. 77 of the L.P.A., 1925, and A, who conveyed as beneficial owner, charges such of the premises comprised in the said lease as remained vested in him with the payment of all money which may become payable by A under the covenant on his part implied by virtue of the same section. The apportionment of the ground rent is made without the concurrence of the landlord. Is it necessary to register a land charge against A in respect of the property which he retains so as to get the full benefit of the covenants implied by virtue of s. 77, and, if so, what is the effect if it is not so registered?

A. The full benefit of the implied covenants is obtained by the use of the expression "as beneficial owner" in the conveyance. The covenants run with the land: L.P.A., 1925, s. 77 (5), and bind the conveying party and the person deriving title under him: *ib.*, 2nd Sched., Pt. X, para. (ii). There is no question of registering a land charge for protection.

UNDIVIDED SHARES—SALE OF MOIETY BY ONE TENANT IN COMMON TO THE OTHER BEFORE 1926—VESTING PROVISIONS.

475. *Q.* A and B owned a freehold property as tenants in common in equal shares. In 1924 A sold the whole of his interest to B. The whole of the purchase-money was paid and exclusive possession taken by B. No assurance has been executed. What, if anything, is now required to vest the entirety of the property in B, and who are the requisite parties?

A. Sub-paragraph (7) (*j*) of Pt. II of the 1st Sched. to the L.P.A., 1925, operated to prevent the legal estate from vesting absolutely and beneficially in B on 1st January last. A and B, therefore, hold the land as trustees for B and should convey the legal estate as B directs.

SETTLED LAND—REPRESENTATION—SALE.

476. *Q.* A testator died in 1920 having bequeathed his residuary estate upon trust for his wife, H, for life, with remainder as to a leasehold house part of the residuary estate, upon trust for his sister, W, for her life, with ultimate remainder to her children in equal shares absolutely. H died in 1922. W died in 1926. No vesting deed has been executed. W leaves six children, all of full age (no child has predeceased her). What has now to be done to vest the house in the six children; or, if it is desired to sell, who can make a title, and how?

A. The personal representatives of W—special (if there were trustees of the settlement) or general, will, when representation has been granted to them, be able to make title as such (Ad. of E.A., 1925, s. 24), or they can assent to the vesting of the land in not more than four persons as trustees holding upon the statutory trusts for the six children of W.

VESTING PROVISION—EXECUTORS AND TRUSTEES FOR SALE—WHETHER ASSENT NECESSARY.

477. *Q.* We are acting for clients who are trustees under the will of a testator who died over twelve years ago, and by his will he appointed our clients executors and trustees and devised his real and personal estate to them upon trust for sale and conversion and division of the proceeds amongst his children. We are now selling a piece of land, and are contending that our clients can sell as such trustees for sale without the necessity of an assent by themselves, as personal representatives, to themselves as trustees for sale, and in support of this contention have quoted sub-para. (*b*) of para. 6 of Pt. II of the 1st Sched. to the L.P.A., 1925 (transitional provision). The purchaser's solicitors contend that, notwithstanding this, the assent is necessary by virtue of s. 36 of the Ad. of E.A., 1925. We have "Prideaux's Precedents" and also Messrs. Butterworth's, and both sets of precedents appear to us to substantiate our contention.

A. As the testator died as long ago as twelve years, the duties of the executors *quâ* executors would almost certainly have been completed before the 1st January last, with the result that the land, by virtue of the provision referred to, became vested in the vendors as trustees for sale. They would have been entitled to require it to be vested in them as trustees for sale, and therefore it became so vested in them by the operation of the transitional provision referred to. If such duties had not been so completed on 1st January last a written assent is necessary.

UNDIVIDED SHARES—PERSON ENTITLED TO ONE MOIETY ABSOLUTELY TO THE OTHER MOIETY AS TENANT FOR LIFE—PARTITION.

478. *Q.* A testator who died in 1879 by his will gave the rents of his leasehold property to his widow for life and afterwards to his son and daughter for their lives respectively, and upon their death to their children absolutely. The widow died 1st July, 1897. The son died in 1904, and his children sold their interest to the testator's daughter who thus became entitled to the whole of the income for life and to one-half of the property absolutely. The daughter died 16th January, 1926, leaving one child (of full age) who under the will of the testator takes the other half of the property absolutely. There are no trustees of the testator's will now living. The daughter by her will appointed two trustees and executors (who have proved same), and gave them the residue of her estate upon trust to sell, and to pay the income to her child for life with remainder to a charity. The leasehold property is not saleable, and it is desired to partition same between the daughter's child and the daughter's estate. Who can make the partition and what documents will be necessary?

A. The opinion here given is that immediately before the commencement of the L.P.A., 1925, the entirety of the property was held at law or in equity in undivided shares vested in possession, the daughter being in effect given a dual legal personality, i.e., absolute owner of one moiety and tenant for life of the other. The result is that on the 1st January last the entirety of the land vested in the Public Trustee upon the statutory trusts under L.P.A., 1925, 1st Sched., Pt. IV., para. 1 (4), and as nothing seems to have been done to divest the Public Trustee the daughter's death did not affect the location of the legal estate. The first step therefore, is to appoint by deed trustees in place of the Public Trustee and to

vest the legal estate in them. This can be done by the daughter's child and the daughter's executors and trustees, who are clearly persons interested in more than an undivided half of the land or the income thereof. See *ib.*, proviso (iii). The next step is to partition the property which can be done by the trustees for sale, when appointed under the statutory power conferred by L.P.A., 1925, s. 28 (3), and which applies whether or not the undivided shares are subject to a derivative trust. The trustees for sale then will, with the consent of the daughter's child and the trustees and executors of the daughter's will, convey the land partitioned in severalty to the daughter's child in fee simple, and to the trustees of the daughter's will on the trusts of the will.

UNDIVIDED SHARES—TRUST FOR SALE.

479. *Q.* A testator, who died in 1909, appointed three of his sons to be executors and trustees of his will. Only two of the executors proved power being reserved to the other executor. The testator "gave, devised and bequeathed" to his wife the income derived from certain freehold property, such income to be enjoyed by her during her lifetime and afterwards by his daughters conjointly. Testator then proceeded to "give, devise and bequeath the said freehold property to his five children (namely, the said two daughters and the three executors) in equal shares conjointly, subject to the life interests before mentioned." The testator continued "the said property may be sold at such time as is considered advisable by my executors and trustees and my said five children or their heirs are to take equal shares of the proceeds of such sale." The testator's widow died intestate in 1920, and administration to her estate was granted to one of the sons who proved the said will. The property has now been sold, and we should be glad to have an opinion as to what steps are necessary to perfect the title and who should be the parties to the conveyance to the purchaser.

A. It seems clear from the data given that the entirety of the land was immediately before the commencement of the L.P.A., 1925, held by the executors and trustees of the testator's will in trust for persons entitled in undivided shares, with the result that such executors and trustees now hold upon the statutory trusts: L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (1), and they can make title as such.

480. *Q.* A died in 1886, having by his will, appointed his wife and daughter executors, and devised his real estate to them upon trust to divide the rents between themselves during their joint lives, and for the daughter (if surviving) during her life. After the death of the survivor, the testator devised his real estate unto and equally between the children of his daughter (including the issue of any deceased child *per stirpes*). The widow died some years ago, and the daughter died in 1926 intestate, leaving eight children, all of whom are of age. No vesting deed was executed. A general grant of administration of the daughter's estate has been made to two of the children. It is now intended to sell the property. Will it be necessary to appoint trustees of the settlement created by the will so that a vesting deed can be executed? If so, it is assumed that the eight children would make the appointment under s. 30 (v) of the S.L.A. In whom and how should the property then be vested as there are more than four persons entitled? The parties desire that the two children who took the grant of administration should act as trustees for sale.

A. On the 1st January, 1926, the land was settled land, and the legal estate in fee simple therein, became vested in the daughter who was the tenant for life: L.P.A., 1925, Pt. II, paras. 5 and 6. On the daughter's death, therefore, if there had been trustees of the settlement, namely, that constituted by the will of A, the land would have vested in them under Ad. of E.A., 1925, s. 22. There being no trustees of the settlement, it is conceived that the legal estate in the land vested in the daughter's administrators under the general grant. The administrators can, therefore, sell *quâ* representatives. Alternatively, on the daughter's death, the land ceased to be settled land, the persons beneficially entitled thereto being absolutely entitled in undivided shares. The administrators can therefore assent, in writing, to themselves as trustees for sale, and can then sell. This second alternative is the one recommended for adoption in this case.

481. *Q.* A in January, 1926, became the owner of two houses, Nos. 1 and 2, and a piece of land adjoining, containing a pool of water. In February A sold to B house No. 1, and in the conveyance granted to him, a right of way over a passage on No. 2, and also a right to take water from the pool with right of access. The deeds were retained by A, who did not make any memorandum thereon of the sale to B of house No. 1, or of the rights also granted. Under the circumstances is it necessary, or advisable, for B to register his rights over house No. 2, and field as *equitable* easements under Class D? If not, a subsequent purchaser from A of house No. 2 and field would have no notice of B's rights over such premises.

A. It is not clear from the data given whether the grant of the rights of way and to take water were given to B personally; if that it so, both rights ought to be registered as equitable easements Class D; see L.C.A., 1925, s. 10, Class D (iii); or whether they were conveyed with the house No. 1, in fee simple, and annexed thereto for its benefit; if the latter is the case they are legal easements, and do not require a land charge to protect them; see "Wolstenholme and Cherry" Vol. I, p. 585. Registration of non-registrable interests gives no protection.

SALE OF SETTLED PROPERTY—RENT CHARGES.

482. *Q.* A strict family settlement created in 1874 contains power for the settlor to appoint to a subsequent wife a jointure rent-charge not exceeding £200 per annum. Subsequently by an ante-nuptial document executed in 1890, and made between the settlor of the one part and the intended wife of the other part, the settlor in exercise of the power for this purpose given to him by the said settlement appointed that the intended wife if she should survive him should receive during her life a yearly rent-charge of £200 for jointure, to issue out of all the hereditaments, subject to the uses of the said settlement, the said intended wife to have certain powers of distress etc., as therein mentioned. The said settlement also created certain portions terms for younger children, and by the said deed executed in 1890 the settlor made certain appointments thereof for his younger children. A vesting deed was executed on the 8th March, 1926, and it is stated therein that: "The following or additional larger powers conferred by the said settlement in relation to the settled land, and by virtue of the S.L.A., 1925, operated and were exercisable as if conferred by that Act on a tenant for life the said H.C.B. (tenant for life) had power to jointure a wife to a sum not exceeding £350 per annum, and charged the settled land not exceeding £7,500 for portions for his younger children." The question now arises as to whether or not the purchaser under the vesting deed takes free from the portions terms, and also the rent-charge. With regard to the latter it would appear clear that the conveyance under the vesting deed would over-reach the portions terms and the appointments thereunder, but with regard to the rent-charge the position seems somewhat difficult. Under s. 72, s-s. (3) of the S.L.A., 1925, it would appear that a conveyance by a tenant for life operates to over-reach an annuity or charge within the meaning of Pt. II of the L.C.A., 1925, s. 4, s-s. (v), which sub-section reads as follows: "In this Part of this Act the expression 'annuity' means a rent-charge or an annuity for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives created after the twenty-fifth day of April, eighteen hundred and fifty-five, and before the commencement of this Act, and not being a rent-charge or an annuity created by a marriage settlement or will." The question now arises as to whether or not the ante-nuptial

document of 1890 whereby the powers of jointuring and powers of appointing portions created by the settlement were exercised amounted to a marriage settlement. If this document amounts to a settlement it would appear that a sale by the tenant for life under the vesting deed would not over-reach the yearly rent-charge of £200 a year created by the document of 1890. It may be, of course, that the document of 1890 is not in effect a marriage settlement within the meaning of the L.C.A., 1925, in which event the position might be different.

Addenda :—

On reconsidering the above matter it occurs to the questioner that he may have misconceived the operation of s. 72 of the S.L.A., 1925, and that the question to consider is whether or not the yearly rent-charge comes within s. 72 (2) (i) (ii) and (iii) of the S.L.A., 1925. It is clear that a yearly rent-charge does not come within s. 72 (2) (i) or (ii) which only leaves s. 72 (2) (iii) and assuming the yearly rent-charge comes within this, then in order that it may not be overreached, it must be protected by registration, but s. 72 (3), however, nullifies this so far as annuities within the meaning of Pt. II of the L.C.A., 1925, are concerned. A yearly rent-charge apparently is not an annuity within the meaning of Pt. II of that Act but if it had been it is perfectly clear that the same would have been overreached, and this being so it might be suggested that as the same is not an annuity within the meaning of Pt. II of the L.C.A., 1925, there is all the more reason why the same should be overreached.

A. It seems reasonably clear that the yearly rent-charge is over-reachable on sale by the tenant for life. The provisions of the S.L.A., 1925, s. 72 (2), are general in terms. They, in effect, enact that a conveyance by the tenant for life "to the extent and in the manner to in and which it is expressed or intended to operate and can operate under this Act," will pass the land discharged from all the limitations, powers and provisions of the settlement and from all estates, interests and charges subsisting or to arise thereunder, but subject to certain exceptions not one of which applies in this case. Sub-section (3) of s. 72 simply states that notwithstanding registration under the L.C.A., annuities arising under or within the settlement are over-reachable.

Correspondence.

Appointment of New Trustees.

Sir,—I shall be glad to have the views of your paper upon the question whether in cases where new trustees are appointed in the place of the Public Trustee under the Law of Property Act, it is open to those executing the appointment to appoint themselves, or any two of them, as trustees.

When the point was first discussed opinions were given that it was open to the appointors to appoint themselves, but there have been some opinions to the contrary, and I shall be glad to know what your views on the point are.

Builth, SUBSCRIBER.
4th October.

Increase of Rent and Mortgage Interest (Restrictions) Acts.

Sir,—An interesting point was raised by a correspondent in the columns of THE SOLICITORS' JOURNAL as long ago as 27th June, 1925 (69 Sol. J. 664). Now it seems to me that the fact that there are several houses comprised in the mortgage, the rent and rateable value of which, if taken in the aggregate, would be outside the limits of the Rent Acts, is immaterial provided each house taken separately is within the Act. Section 12 (1) of the Rent Act, 1920, is explicit on this point, and provides that "subject to the provisions of this Act, this Act shall apply to every mortgage where the mortgaged property consists of or comprises one *or more* dwelling-house to which this Act applies or any interest therein . . ."

The fact that the mortgagors are a prosperous trading concern, who make its profits by building and letting houses, is immaterial, and they are entitled to the protection of the Acts equally as much as any private individual owner of such property; and the reason is fairly clear. The reason why mortgages of property to which the Rent Act applied, were also restricted, was because the owners, the mortgagors, were themselves restricted in making a profit out of the property, so that it would have gone bad with an owner of such property, who could not raise the rent beyond a certain amount, and who could not obtain possession except in special circumstances, if the restrictions were ever put on the mortgagees of such property, and if the latter remained entitled to charge whatever interest they liked, and to call in the mortgage in the usual way. For the above reasons, it can make no difference whether the owner of such mortgaged property is a private owner, or a flourishing trading concern. They are both entitled to the protection of the Acts.

With regard to the query whether the court would override the provisions of the Act in cases where the mortgagee required the money for the purpose of winding up an estate, there is no statutory provision to that effect; and there is no refuted case, as far as we are aware, which confers any such power on the court. The only cases in which the mortgagee is entitled to call in his security is where interest is in arrear for twenty-one days, or where there has been a breach of covenant by the mortgagor, or a failure on his part to keep the property in a proper state of repair (*cf.* s. 7 There are also two exceptional cases, to which the restrictions against the calling in of mortgages do not apply, viz., where the principal money is repayable in instalments in certain cases (proviso (i)), and where the mortgaged property is leasehold, which is seriously diminishing in value or is in jeopardy (proviso (ii)).,

Except in these cases, there is no power of calling in against the will of the mortgagor, a mortgage of property to which the Rent Acts apply. S.

Books Received.

Welsh Tribal Law and Customs in the Middle Ages. T. P. ELLIS, M.A., F.R.Hist.S. In two volumes. Medium 8vo. pp. ix and 456 (Vol. I) and 460 (Vol. II). 1926. The Clarendon Press. 80s.

The Bombay Law Journal. Vol. IV, No. 4, September, 1926. Royal 8vo. The Maneck Printing Press Co., Anand Nivas, Tribhuvan-road, Bombay, 4. Single copy, Rs. 1.8.

Sale of Food and Drugs. Extracts from the Annual Report of the Ministry of Health for 1925-1926, and Abstract of Reports of Public Analysts for the year 1925-1926. H.M. Stationery Office. 1s. 6d. net.

Complete Practical Income Tax. A. G. MCBAIN, Chartered Accountant. Second edition. 1926. Demy 8vo, pp. 263 (with Index). Gee & Co. (Publishers), Ltd., 6, Kirby-street, E.C.1. 7s. 6d. net.

Annual Local Taxation Returns, England and Wales. 1923-1924. Pt. III. 1926. Demy 8vo, pp. v and 57. H. M. Stationery Office. 5s. net.

Executors and Administrators, their Functions and Liabilities, or "How to Prove a Will." G. F. EMERY, LL.M., Barrister-at-Law. Fourth edition. 1926. Crown 8vo, 180 pp., with Index. Effingham Wilson, 16, Copthall-avenue, E.C.2. 3s. net.

Sixth Report of the Advisory Committee on the Welfare of the Blind to the Minister of Health. 1924-1926. Demy 8vo, pp. 32. H. M. Stationery Office. 9d. net.

A Few Words to the Articled Clerk. DANIEL S. FRIPP, F.C.A. 1926. Large crown 8vo, pp. 39. Gee & Co. (Publishers), Ltd., 6, Kirby-street, E.C.1. 2s. net.

The Secretary and his Directors. HERBERT W. JORDAN (Company Registration Agent), and STANLEY BORRIE (Solicitor). 1926. Seventh edition. Demy 8vo, pp. xii and 130. Jordan & Sons, Ltd., Chancery-lane, W.C.2. 2s. 6d. net.

The Journal of Comparative Legislation and International Law. Sir MAURICE SHELDON AMOS, K.B.E., and F. P. WALTON, LL.D., K.C. (Quebec). August, 1926. Third series. Vol. VIII, Pt. III. Demy 8vo, pp. xxxviii and 277 (with Index). The Society of Comparative Legislation, 1, Elm-court, Temple, E.C.4.

How to Form a Company. An explanation of the Documents filed on Incorporation and the Principal Statutory Requirements affecting Companies. HERBERT W. JORDAN. Seventeenth edition. 1926. Large crown 8vo., pp. viii and 105 (with Index). Jordan & Sons, Ltd., Chancery-lane, W.C.2. 1s. 6d. net.

University of London. Faculty of Laws Section of the University College Calendar, 1926-27. including Particulars of the Inter-Collegiate Courses in Law by the Professor and Teachers of University and King's Colleges and the London School of Economics.

Workmen's Compensation and Insurance Reports, containing Cases germane to Workmen's Compensation, Employers' Liability Insurance and National Insurance, 1926. Part I. G. WHITFIELD HAYES (Barrister-at-Law). Stevens & Sons, and Sweet & Maxwell, Ltd., Chancery Lane, and W. Green and Son, Ltd., Edinburgh. Annual Subscription 30s. (post free)

Mew's Digest of English Case Law. Quarterly Issue. July, 1926. Containing Cases Reported from 1st January to 1st July, 1926. AUBREY J. SPENCER (Barrister-at-Law). Stevens & Sons, Ltd., and Sweet & Maxwell, Ltd., Chancery Lane. pp. xii and 239.

The Secretarial Handbook, being a Practical Guide to a Secretary's duties under the Companies Acts. E. WESTBY-NUNN, B.A., LL.B. 1926. Demy 8vo. pp. 222 (with Index). The Solicitors' Law Stationery Society, Ltd., London: 22, Chancery Lane, W.C.2, 27 and 28, Walbrook, E.C.4, 6, Victoria Street, S.W.1, 49, Bedford Row, W.C.1, 15, Hanover Street, W.1. Liverpool: 19-21, North John Street. Glasgow: 66, St. Vincent Street. 6s. net.

WESTMINSTER HOSPITAL.

The 208th annual report of the house committee of Westminster Hospital, Broad Sanctuary, states that the period under review was the first complete year since the reconstruction of the hospital. There had been a remarkable increase of work in every department. Of 234 beds available for use, 221 had been constantly occupied. The total number of in-patients dealt with was 3,529. Each patient stayed on an average twenty-four days and cost £14 11s. 9d. The number of new out-patients was 20,956. Out-patients made 95,649 attendances. The average cost per out-patient was seven shillings and eightpence. The surgical operations totalled 2,086, and the X-ray and electrical department treated 3,655 patients. In the new private wards 206 patients had been accommodated. The total income was £59,114, and the expenditure £61,764. Annual subscriptions had increased by fifty-eight per cent. From or on behalf of patients £18,983 had been received, this including £5,939 for the patients in the private wards. Mr. Austin Taylor had been elected chairman of the hospital in succession to the late Sir E. E. Pearson. Although there has been an increase in public support, the small endowment of the hospital makes the financing of its work exceptionally difficult; and further assistance, particularly by way of legacies, is very necessary.

High Court—Chancery Division.

East Essex Farmers Ltd. *v.* Holder.

Lawrence, J. 1st July.

RESTRAINT OF TRADE—AGREEMENT AS TO SOLICITING CUSTOMERS—REASONABLENESS—SEVERABILITY.

A service agreement which shows that it is intended to apply to the soliciting of future customers who deal in the goods dealt in by the society entering into the agreement at the time when the employee of the said society ceases to be in their service is too wide.

Konski *v.* Peet, 1915, 1 Ch. 530, *followed*; Dubowski and Sons *v.* Goldstein, 1896, 1 Q.B. 478, *not followed.*

Action with witnesses. This was an action in which the plaintiff company claimed an injunction restraining the defendant for a period of ten years from 9th July, 1925, or for such part of that period as the business of the plaintiff company should continue to be carried on from being employed by or concerned in carrying on the business of T. C. Smith and Co. Ltd., or any other business similar to that of the plaintiff company within twenty-five miles of Southminster, and from soliciting any of the members or customers of the plaintiff company to deal otherwise than with the plaintiff company so far as concerned goods supplied in the course of the plaintiff company's business in breach of the agreement; alternatively, from soliciting any of the persons who were on 9th July, 1925, members or customers of the plaintiff company to deal otherwise than with the plaintiff company so far as concerned goods supplied in the course of the plaintiff company's business. The facts were as follows: The plaintiff company was a co-operative society registered under the Industrial and Provident Societies Act, 1893, and carried on the business of corn, seed, manure and coal merchants. They dealt principally with farmers in Essex, and had their headquarters at Southminster. In December, 1923, they engaged the defendant as their manager, and the defendant acted for them in that capacity until 9th July, 1925, when he retired from their service. The agreement under which the defendant was so engaged by the society contained the following provision: "After the manager ceases to be in the employment of the society . . . he shall not for a period of ten years or for such part of the said period of ten years as the said business shall continue to be carried on be employed in carrying on a similar business in or within twenty-five miles of Southminster aforesaid or solicit any of the customers of the said business to deal otherwise than with the society or the persons then carrying on the said business so far as concerns goods supplied in course of the said business." The defendant, while performing his duties as manager, became acquainted with the customers of the society, and acquired an intimate knowledge of their requirements, credit and the methods of the society's business. A little while after he had left the service of the society he entered the service of a company known as T. C. Smith & Co., which carried on a similar business to that of the society in the same district, and he solicited persons who were at all material times members or customers of the society to deal with T. C. Smith & Co. in relation to goods supplied in the course of the society's business. The question in this action material for the purposes of this report was whether the part of the agreement which related to solicitation of customers was too wide.

LAWRENCE, J., after stating the facts, and deciding that the area covered by the agreement was too wide for the reasonable protection of the plaintiff society's business, said: It has been argued on behalf of the plaintiff that upon the proper construction of the agreement the latter words of the agreement not to solicit "any of the customers of the said business to deal otherwise than with the society or the persons then carrying on the said business" shows that the class of customers in the contemplation of the parties is limited to

the persons who were customers of the society at the termination of the defendant's service. But that contention is refuted by the evident intention shown on the face of the agreement to prevent the defendant, after he left the society's service, from soliciting, *inter alia*, any future customers who dealt in goods dealt in by the plaintiff society at the time when the defendant ceased to be in the service of the society. Although the restriction is limited to soliciting in respect of goods supplied in the course of the society's business while the defendant is managing their business, yet there is no restriction as to the customers whom the defendant is prohibited from soliciting. The agreement goes beyond what is reasonably necessary for the protection of the employer's business because it applies to persons who may become customers after the defendant's service with the society is determined. The decision of Neville, J., on this point in *Konski* v. *Peet*, 1915, 1 Ch. 530, will be followed in preference to the *dicta* of Lord Esher, M.R., and Rigby, L.J., in *Dubowski and Sons* v. *Goldstein*, 1896, 1 Q.B. 478. The agreement is not severable, and being unreasonable is bad.

COUNSEL: *Jenkins*, K.C., and *F. R. Evershed*; *Owen Thompson*, K.C., and *Robert Fortune*.

SOLICITORS: *J. Wylie Patterson*; *Ernest G. Scott*.

[Reported by L. MORGAN MAY, Esq., Barrister-at-Law.]

In re **Wait.** Astbury and Lawrence, JJ. 8th July.

BANKRUPTCY—CONTRACT OF SALE—C.I.F.—SPECIFIC GOODS—ONE MOIETY ABOUT TO BE SHIPPED—PURCHASE MONEY—PAYMENT OF—SUBSEQUENT BANKRUPTCY OF VENDOR—MOIETY NOT APPROPRIATED—SPECIFIC PERFORMANCE AGAINST TRUSTEE—SALE OF GOODS ACT, 1893, 56 & 57 Vict. c. 71, ss. 52 and 62.

The sale of 500 tons part of a parcel of 1,000 tons of Western White Wheat ex motor vessel "Challenger," although not specifically appropriated so as to pass the legal property therein is nevertheless a sale of specific or ascertained goods within the meaning of s. 52 of the Sale of Goods Act, 1893, and the court in its discretion directed specific performance of such a sale against the trustee in bankruptcy of the vendor.

Pearce v. Bastable's Trustees, 1901, 2 Ch. 122, *followed*.

Appeal from the Bristol County Court. The following facts are taken from the judgment:—

By a c.i.f. contract of 20th November, 1925, Wait bought from certain vendors 1,000 tons of Western White Wheat ex motor vessel "Challenger," expected to load between 16th and 31st December from Oregon. The price was 57s. per 480 lbs. By a c.i.f. contract of 21st November, 1925, Wait sold 500 tons of this parcel by the same description and at the same price to sub-purchasers, adding: "The wheat sold is part of a parcel bought from (named vendors) under contract dated 20th November, and in the event of their not duly fulfilling same it is understood that Wait is not to be liable to (sub-purchasers)." The wheat was shipped in bulk at Oregon on 21st December, 1925, and a bill of lading of that date for the 1,000 tons was issued. The freight was £1,500. This bill of lading was received by Wait on 4th January, 1926, and the purchase price was payable on 6th February, i.e., thirty-three days after sight. On 5th January, 1926, Wait sent the sub-purchasers a provisional invoice for their 500 tons, the price of which, less £750, half-freight, payable at a destination, was £5,933, due 6th February. On 2nd February he sent a confirmatory invoice, and on 5th February the sub-purchasers gave him a cheque for the £5,933. Wait paid this and other cheques into his bank. He also hypothecated the above and other bills of lading to his bank to secure his overdraft. He then had only one general account. On 9th February, however, the bank on its own initiative and without any request from Wait, opened separate loan accounts for the above and other shipments. Account No. 1, which related to the 1,000 ton transaction, commenced with a credit of the £5,933 cheque and a debit of £11,797 transferred from the general account, against which amount the 1,000 tons bill of lading was held. On 17th February, Wait gave notice of suspension of payment, and on 24th February he was adjudicated bankrupt on his own petition, and Collins was appointed special manager by the Official Receiver. On 29th February the sub-purchasers sent Collins a cheque for the £750 half-freight, but he returned it by the Official Receiver's instructions, and on 27th February he discharged the £11,797 debit and received the 1,000 tons bill of lading, leaving No. 1 account in credit £5,933. On 28th February the "Challenger" arrived at Avonmouth with the 1,000 tons in bulk. The sub-purchasers' 500 tons had never been appropriated. On 3rd March the sub-purchasers issued a notice of motion in the Bristol County Court asking that the trustee (then the Official Receiver) should specifically perform the contract of 21st November, 1925, by delivering 500 out of the 1,000 tons of wheat on the "Challenger" to the sub-purchasers on payment of the £750 half-freight. Alternatively, they asked for an order for repayment of the £5,933 purchase money or alternatively for a declaration that they had a beneficial interest in the parcel of wheat to the extent of 500 tons and a charge thereon and on the bill of lading for the £5,933 purchase money. On 5th March, Collins was appointed trustee and subsequently made a respondent. On 13th March, the county court judge held that the 500 tons were not "specific or ascertained goods" within the authorities, and he could not order specific performance, but holding that the £5,933 purchase money was in the nature of a trust fund ear-marked for a specific purpose, and that in any case it was unconscionable for the trustee as an officer of the court to keep both the goods and the purchase money, he ordered the trustee to repay that amount. On 31st March, the trustee gave notice of appeal, and on 1st April the sub-purchasers gave a cross-notice asking for specific performance if it were held that the order for repayment could not stand.

ASTBURY, J., after stating the facts, said: The question is whether the goods are specific within s. 52 of the Sale of Goods Act, 1893, which enables the Court to grant specific performance of a contract to deliver "specific" or "ascertained" goods. By s. 62 specific goods mean "goods identified and agreed upon at the time a contract of sale is made." It is admitted that the goods were never appropriated, so that the legal property had not passed, but the question is whether they are specific within s. 52. The distinction between specific and generic goods is well recognised in this connexion (see *Holroyd* v. *Marshall*, 1861, 10 H.L.C. 192; *Hoar* v. Fraser, 1859, 7 H.L.C. 290; *Howell* v. *Compland*, 1874, L.R. 9 Q.B. 462; 1876, 1 Q.B.D. 258; and "Fry on Specific Performance," 6th ed., p. 38). In the case of *The Thames Sack and Bag Company* v. *Knowles and Company*, 1918, W.N. 176, it was not contended that the goods were specific, and the only question in *Hayman* v. *M'Lintoch*, 1907, S.C. 936, and in *Lawrie and Morewood* v. *Dudin & Sons*, 1926, 1 K.B. 223, was whether the property had passed. Here, admittedly, the property has not passed, but the Court can nevertheless grant specific performance under s. 52 (see *Jones* v. *Tankerville*, 1909, 2 Ch. 440) even against a trustee in bankruptcy (see *Pearce* v. *Bastable's Trustee*, *supra*). In the present case, in my judgment, the sub-purchasers have bought goods identified and agreed upon at the time of the contract, i.e., specific goods within ss. 52 and 62, and, in the exercise of my discretion, I make an order under s. 52 for specific performance on payment of the half freight already tendered and refused.

LAWRENCE, J., delivered a judgment to the same effect.

COUNSEL: *Clayton*, K.C., and *Croom-Johnson*; *Luxmoore*, K.C., and *Wethered*.

SOLICITORS: *Peacock & Goddard*, for *Bevan, Hancock & Co.*, of Bristol; *Hancock & Willis*, for *Barry & Harris*, of Bristol.

[Reported by L. MORGAN MAY, Esq., Barrister-at-Law.]

Cummins *v.* **Bond.** Eve, J. 22nd July.

COPYRIGHT—PSYCHOLOGICAL RESEARCH—AUTOMATIC WRITING BY MEDIUM—INFRINGEMENT—COPYRIGHT ACT, 1911, ss. 1, 2.

A lady journalist engaged as a medium in psychical research claimed copyright in a production written by her in automatic writing and alleged to be communicated by a spiritual agent. The defendant was present at some of the séances and alleged that the communication was addressed to him. He claimed that the copyright was in him, or that it was a joint copyright, or that there was no copyright in anyone.

Held, that the plaintiff was the sole owner of the copyright.

This was an action by a lady journalist engaged as a medium in psychological research for an injunction to restrain the defendant from infringing her copyright by producing or reproducing in book form a work of hers called "The Chronicle of Cleophas." The plaintiff was a medium, capable of producing automatic writing, which was produced thus: she covered her eyes with her left hand, took a pencil in her right hand, and wrote on a sheet of foolscap. During that time she was said to be only partially conscious, and she only partially remembered what she had written, but there was no suggestion that it was dictated or was a copy of any existing book or work. The subject of the writing had reference to the early days of the Christian Church. The defendant was also interested in psychological research, and automatic writing. He was present at the *séances* at which the work was written, which was believed by them to be communicated by a spiritual agent. The script was taken away by the defendant, who transcribed, punctuated and put it into paragraphs, and then furnished a copy of it to the plaintiff. The defendant at one time claimed to be sole owner of the copyright, but by his defence he pleaded that there could be no copyright in such a production, and in any case if there were it was a joint copyright. The plaintiff claimed that the work was produced by external psychic agency, and asked for a declaration that she was the owner of the copyright.

EVE, J., said that the issue in the action was reduced to the simple question who, if anyone, was the owner of the copyright in the work referred to. *Primâ facie*, the first owner was the plaintiff, who, it had abundantly been proved, was the writer of every word. The plaintiff and her witnesses and the defendant were all of opinion, which they no doubt honestly held, that the true originator was one who was no longer an inhabitant of this world, but according to their view, he it was who had spoken. The plaintiff claimed to possess some qualification in combination with the scribe for communicating that information. The authors would therefore appear to be the scribe and the plaintiff, but as the court had no jurisdiction beyond this country, it was necessary, having regard to the Copyright Act, to confine the copyright to the plaintiff. The defendant, however, claimed joint rights in the work, and he was no doubt deeply interested in the matters discussed in the case and attended many *séances*, but it was a delusion to suppose that he had contributed to the production. Then he also said that there was no copyright in anyone, but his lordship thought that it rested in the plaintiff. It was also argued that the plaintiff was estopped from claiming copyright by her acquiescence in the publication of parts of the script, for which she had given a licence, but that was untenable. The plaintiff was therefore entitled to a declaration that she was the owner of the copyright with costs of the action.

COUNSEL: *Vaisey*, K.C., and *Macgillivray*; *Moritz*, K.C., and *G. Hutchinson*.

SOLICITORS: *Field, Roscoe & Co.*; *Scott & Son*.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Societies.

The Law Society.

PROVINCIAL MEETING.

(*Continued from p. 990.*)

The reading of papers was continued on Wednesday morning, when Mr. CHAS. L. NORDON, LL.B. (Lond.) read the following paper:—

"ARBITRATION."

Whilst it is of primary importance that contractual engagements shall be so framed as to avoid as far as possible the risk of disputes arising thereon, it is of almost equal importance that such disputes as cannot be prevented shall be adjudicated with rapidity, economy and accuracy.

As a profession we are concerned to enquire in which cases it is in our clients' interest that disputes shall be determined by private arbitration rather than by the decision of a Judge, and in what directions the available machinery of arbitration may be improved. The question is particularly pressing at the moment in view of the appointment by the Lord Chancellor of a Departmental Committee, under the chairmanship of Mr. Justice MacKinnon, to consider and report whether any, and if so, what, alterations are desired in the law relating to arbitration. Moreover, to quote the words of Mr. Justice Salter in the recent case of *Kursell* v. *Timber Operators, &c.*, 1923, 2 K.B. 202:—

"In modern times Parliament has shewn a constantly "increasingly desire to aid and encourage private arbitration."

I cannot hope within the space at my disposal to cover the whole range of my subject, but must content myself with treating of certain aspects which may be useful to those who are accustomed or may require to resort to arbitration, and with indicating certain safeguards which may help to avoid some of the pitfalls and difficulties inherent in the present system.

It is interesting to note, in passing, the following definition of an Arbitrator given in Giles Jacob's Law Dictionary (published in 1739 and dedicated to Sir Robert Raymond, then Lord Chief Justice of England):—

"An Arbitrator is a private extraordinary Judge between Party "and Party, chosen by their mutual Consents, to determine "Controversies between them. And Arbitrators are so called "because they have an *arbitrary* Power; for if they observe the "Submission and keep within due bounds their Sentences are "definitive, from which there lies no Appeal. (1 Roll. Abr. 251.)"

The modern development of arbitration has, however, falsified that definition, for the decision of an Arbitrator is now open to review in nearly every case where the decision of a Judge would be subject to appeal, though the machinery for review, as I shall endeavour to show, is in many respects cumbrous and unsatisfactory, and a party who has insufficient knowledge of modern practice and procedure may easily be subjected to injustice.

There are two kinds of submission to arbitration with which we are familiar, one which is entered into before any dispute has arisen, and the other framed specifically to settle an already defined difference. The first kind may be sub-divided into (A) those where, in a contract drafted "ad hoc," and, as it were, with their eyes open, the parties agree that possible disputes thereunder shall be referred to arbitration, and (B) where, by a "take it or leave it" contract (such, for example, as a policy of insurance), the person who wishes to do business is obliged "willy nilly" to accept a printed form containing a clause protecting the author from the jurisdiction of the Courts until the dispute has first been determined by arbitration. I respectfully question the desirability of enforcing arbitration in the latter case against an unwilling party who prefers to have recourse to the Courts, for he can scarcely be said to be a free agent in accepting arbitration, and I suggest that a clause should be inserted in the next Arbitration Act to provide that no party shall be entitled to rely against the wishes of his opponent on an arbitration clause upon which the former insists as part of the standard contract on which he transacts business, especially if that clause contains, as it very often does, a proviso that the award of the Arbitrator shall be final and conclusive and the Arbitrator shall not be compelled to "state a case." There are equally two forms of the second kind of Submission—one where the parties agree upon a named Arbitrator (which is always the more satisfactory and sensible form), and the other where they take a leap in the dark and submit their difference to someone who is to be chosen by the Court, or by some individual or association, but who, when so chosen, may be unsatisfactory on various grounds.

By the law as it stands to-day an Arbitrator, curiously enough, need possess no judicial qualifications and he owes no legal responsibility (except in case of fraud) to those who seek his services. His precursor under Roman Law, the "Judex" or private judge, appointed by the prætor or magistrate under the terms of a submission or "formula," was liable "ex maleficio" if he gave a wrong decision. The reason for this liability, even although it arose from ignorance, was that the "Judex" could always avail himself of the services of the "juris prudentes" (the equivalent of the legal

assessor of to-day) or could have recourse for guidance to the prætor who had assigned the action to him for trial. Similar assistance is obtainable by the Arbitrator to-day, but if he does not avail himself of it and goes astray he is immune from the consequences of his error. Every member of the legal profession and many of the commercial community know to their sorrow how costly such consequences may be, especially to the party in whose favour an erroneous award is given in the first instance. If arbitrations are to continue in favour it is of pressing importance that the first decision shall be the correct one so far as human wisdom can secure.

I venture to suggest therefore that no person should by law be permitted to act as Arbitrator who has not proved himself by examination to have some knowledge of legal principles and particularly of the rules of evidence. It seems a curious anomaly that although, in order to protect the public against ignorant legal practitioners, no person may practise as an advocate in the Courts until he has given evidence as sufficient training in the law, yet any unqualified person may be allowed to adjudicate in an arbitration with serious, costly and far-reaching consequences. I do not propose to lay down in detail the educational qualifications I would prescribe, but suggest that no person other than a barrister or solicitor or an accountant whose qualifying professional examination has included legal subjects should be permitted to act as Arbitrator unless he has first passed a qualifying examination, which might be held by a joint committee of the councils of the professions I have indicated. Moreover, if such qualification is insisted upon there should be no need for the parties to incur the additional expense, to which they almost invariably have to submit in a case before a lay Arbitrator where legal questions are raised, of having the Arbitrator guided by a legal assessor who in practice writes the award.

Next, as to the cases where arbitration is mutually advantageous. These seem to be limited to those where (1) privacy or (2) rapidity are essential or (3) where the dispute involves simply a pure question of fact or technical opinion such, for example, as whether goods are merchantable or up to sample or whether a piece of machinery will function. I cannot conceive any other cases where a private Arbitrator will prove, in the long run, a more suitable tribunal than the appropriate Court of the country. It should be pointed out, however, that privacy cannot be secured unless the parties agree that they will not ask the Arbitrator to " state a case " or otherwise apply to the Court for review, but will treat the award as final. In the matter of rapidity, under present procedure, if either party or the Arbitrator is dilatory the commercial Court may prove to be the more speedy tribunal. On the question of expense, unless the Arbitrator is thoroughly familiar with his duties and is willing to accept a reasonable fee, an arbitration may not be much more economical than a lawsuit.

Of late years the practice has grown up of each trade association having its own panel of Arbitrators. It might be said on first thought that a member of the trade having special knowledge of its practice and customs is a suitable Arbitrator for disputes arising therein. To this it may be answered that such an Arbitrator may not have sufficient knowledge of the rules of evidence or of the legal principles applicable to the dispute or that his very membership of the trade and his personal acquaintance with one or other of the parties may place him in an embarrassing position so as to affect his independent judgment. This last objection, of course, would not apply to the case where the parties agree on a specified individual as Arbitrator (which is always the preferable course), but only to those where the president of the association makes the appointment.

Difficulties of the kind I have briefly suggested, and others of like character, could be overcome by the appointment, as Registrar of Arbitrations, of the Senior Master of the Supreme Court in London and the District Registrars in the provinces. These Registrars would compile and maintain a panel of properly qualified Arbitrators comprising the leading commercial practitioners willing and qualified to act in that capacity and for cases involving technical questions, composed of those possessing special knowledge in each particular industry. Then on the application of either party the Registrar from his panel could submit six names to both parties and request them to agree upon one mutually acceptable who would then be the Arbitrator chosen. On any unreasonable refusal to agree the Registrar would make his own selection.

The London Chamber of Commerce have established an arbitration procedure of their own which they have committed to the charge of a body styled the " London Court of Arbitration " (the use of the word " Court " being in this respect somewhat misleading). The Chamber recommend the parties to commercial contracts to insert the following clause :—

" The construction and performance of this Contract shall be " governed by the Law of England and all disputes which may " arise under, out of or in connection with or in relation to this " Contract shall be submitted to the arbitration of the London " Court of Arbitration under its Rules at the date hereof."

This clause is open to objection inasmuch as it gives no certain guide to the parties or to the Arbitrator as to how far the statutory provisions are incorporated. Moreover, the reference to the dispute being referred to the arbitration of the " London Court of Arbitration " would not lead some people to think that their dispute is to be settled by the particular individual only whom that body chooses to nominate. My plea in this respect is for complete and statutory unification of procedure so that arbitration shall mean the same thing in every document, namely, arbitration under the Statutory Provisions for the time being in force subject to any special agreement which the parties may make with their eyes open and in plain terms. For example, in *Scrimalgio* v. *Thornett*, 1924, 131 L.T. (A.C.), it was held that a clause in the contract that " Any dispute arising out of this Contract to be settled by Arbitration " in London in the usual way " does not mean that the dispute is to be settled (as one of the parties thought) by an ordinary arbitration under the Arbitration Act, but by the usual, though not the invariable way in which disputes arising in the trade dealing with the particular commodity in question in that case, are settled in London.

On the question of rapidity it is clear nothing is gained if the Arbitrator follows the same procedure as in an action, namely, by ordering Points of Claim, Defence, Reply, Discovery and Interrogatories in succession. My suggestion is that an intending plaintiff in an arbitration shall, without waiting for the appointment of an Arbitrator, serve by registered post upon the proposed defendant a " Demand for Arbitration " setting forth in full particulars, the nature of his complaint and the amount of his claim. This " Demand " should be accompanied by a carbon copy of the documents relied on (the original being reserved for the Arbitrator when appointed). The defendant should be obliged to serve the plaintiff with his " Arbitration Answer " within seven days accompanied by copies of any additional documents on which he desires to rely. If the defendant raises a counterclaim the plaintiff should deliver his " Arbitration Reply " within three days, similarly accompanied by any additional documents. The issues being thus defined the dispute is promptly ready for adjudication and its nature as thus disclosed would help the Registrar in his selection of a suitable Arbitrator. Either party should have the right to apply to the Registrar (not, for obvious reasons, to the Arbitrator) for the exclusion from the record of any inadmissible document and the record as finally settled would be delivered by the Registrar himself to the Arbitrator chosen. In order to safeguard the parties against wilful suppression or falsification of documentary evidence penalties should be provided for punishment of such malpractice. If either party refuses to disclose his documents or to make reasonable admission of facts the Arbitrator should have power to order Discovery and Interrogatories. It is true that it was held in *Kursell* v. *Timber Operators, etc.*, 1923, 2 K.B. 202, that an Arbitrator may order Discovery and Interrogatories, but no remedy seems to be provided against a party who refuses to obey such an order. The law should be strengthened in this respect by depriving the refusing party of the right to be heard by the Arbitrator and by giving the latter wide discretionary powers as to the inference he is to draw from the refusal. The plaintiff should deposit with the Registrar a sum estimated by the latter as the probable amount of the Arbitrator's fees in order to save the Arbitrator from the invidious position of having to take proceedings afterwards, and the Registrar should have power to tax the Arbitrator's fees if the parties fail to agree to them or unless they make their own agreement with the Arbitrator as to the amount of his charges. It would result in a considerable saving of time and expense if both parties should have the right to deliver to the Arbitrator and their opponents a written note of their legal arguments and of the authorities on which they intend to rely. Each party should also inform the Arbitrator of the names and addresses of his witnesses (the number of experts to prove or corroborate the same point being strictly limited). There would seem no reason why in an ordinary case conducted with this simplified procedure the Arbitrator should not hear the case within one week of the delivery of the record to him and publish his award within one week of the close of the hearing. The " happy-go-lucky " method by which many arbitrations are conducted to-day leads to unsatisfactory results and short cuts often prove the most expensive route.

Next a few words as to the form in which the award should be drawn. I consider that an Arbitrator should in every case, whether specially requested or not, publish his award in a reasoned form. If that practice were made uniform Arbitrators would listen to the evidence and study the legal arguments with greater care than they sometimes do at present. It would also be desirable that in addition to giving reasons for his award and dealing with any points of law raised by either party, the Arbitrator should append the copies of the documents given to him for the purposes of the arbitration and a note of the evidence given by the witnesses, so that the Court of review (if the award has to be reviewed) would then have all the necessary material. In cases where a sworn shorthand writer does not record the evidence I suggest that it should be part of the duty of the Arbitrator to take a sufficient note and to read that note over to the witness in the presence of the parties before dismissing him. After publication of the award a simple summons to enforce its provisions could be taken out before the Registrar, who would make an order in the terms thereof unless the respondent should ask to have the award reviewed for some error apparent on the face of the award or of the Record. If the award should be in favour of the defendant it would, of course, be left for the plaintiff to apply for the review. In cases where review is sought the more satisfactory tribunal would be the Court of Appeal, as in the case

of references under the Workmen's Compensation Act, especially if the award is in a reasoned form with the documents and evidence on which it is based annexed to it. In the procedure I have suggested an interim opinion by the Court on a point of law, and the delay and expense thereby involved would no longer be necessary. A further advantage of the reasoned award would be this, that very often the unsuccessful party, if the award be framed in a reasoned manner and with the necessary material collected, might feel convinced that the decision was just and the Arbitrator's reasoning sound, and might see his own case in a new light and thus be discouraged from wasting money in an attempt to upset the award if it should seem on perusal accurately to define the rights of the parties.

I venture to hope that the Report of the Lord Chancellor's Committee will recommend and lead to the codification of the law and practice relating to arbitrations. As we know, the main provisions are still contained in the Arbitration Act 1889. A small amending section (No. 16) is put into the middle of the "Administration of Justice Act" 1920 to deal with arbitrations before three Arbitrators (as to which the Arbitration Act 1889 made no provision). The Arbitration Clauses (Protocol) Act 1924 gives statutory recognition to the Arbitration Protocol adopted by the League of Nations on 24th September 1923, and provides that the Courts shall stay legal proceedings where the parties have expressly agreed to arbitration. Although the protocol provides that the arbitral procedure shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place, it is to be hoped that our Courts will never give effect to that juridical anomaly in vogue in some Continental countries known as the "Amiable Compositeur," who has power to decide cases without being bound by rules of law and without appeal. Provisions as to appeals on a Special Case stated under the Arbitration Act 1889 appear similarly isolated at Section 31 of the Supreme Court of Judicature Consolidation Act 1925 (it is not mentioned in the Act whether this section applies to a case stated under Section 7 or Section 19). Similarly isolated in the last-mentioned Act is Section 94, which by statute (instead of by the previous and indirect method of holding a refusal to be misconduct) obliges a Referee or Arbitrator to state in the form of a Special Case for the opinion of the Court any question of law arising in the course of the Reference. It is rather difficult to know why Section 94 was put into the middle of the Supreme Court of Judicature Consolidation Act 1925, as it does little more than re-enact Section 19 of the Arbitration Act 1889, except that this section does not, as did the 1889 Act, deal in terms with the position of the Umpire.

I think it will be conceded that the procedure of appointing two Arbitrators and an Umpire is cumbersome and archaic. The Arbitrators appointed by each party are in practice advocates for their nominators, and if, as they almost invariably conceive to be their duty, they fail to agree, the parties are put to the expense of a re-hearing before the Umpire. On the other hand, if the parties agree upon three Arbitrators their award must generally be unanimous to be binding. I suggest, however, that if in a special case three Arbitrators are considered necessary, then the award of the majority should be decisive, subject to review for any mistake appearing on the face of it.

It will be remembered that Section 7 of the Arbitration Act 1889 gives the Arbitrator power, but does not compel him, to state his award in the form of a Special Case for the opinion of the Court. Having done that, if he will do it, he is "functus officii" and thenceforward the Court alone can deal with his award. The Section 7 case is set down before a single judge (usually the Commercial Judge). From his decision an appeal lies without leave. Under Section 19 of the Arbitration Act 1889 the Arbitrator may and can be compelled to state in the form of a Special Case for the opinion of the Court any question of law arising in the course of the reference, and having done so the arbitration is suspended until the Divisional Court (or a Chancery Judge if the case be referable to the latter) has given the Arbitrator its opinion. But that opinion when expressed is not an Order and does not bind the rights of the parties and there is no appeal. If, however, the Arbitrator incorporates in his award the opinion of the Court given on the Special Case under this section, we arrive at the comical result that an application to set aside the award for an error appearing on the face of it must be refused by the Court of first instance, who are bound to say that the incorporated law stated by their colleagues in their opinion is right. It is then, however, open to the complaining party to appeal from this second decision of the Court to the Court of Appeal and to ask the Court of Appeal to set aside or remit the award (see *British Westinghouse Electric & Manufacturing Co. Limited* v. *Underground Electric Railways Co.*, 1912, A.C. 673). Under Section 10 of the Arbitration Act 1889 the Court still has power to remit any award with a direction to the Arbitrator to re-state it in the form of a Special Case so as to raise a specified point of law.

As the whole scheme of the Acts seems to be to give a party to an arbitration a right to review by the Courts it seems curious that there is no legislative compulsion upon an Arbitrator to state his complete award under Section 7, though he *may* do so if he likes. On the other hand he can be *compelled* to state a case for the opinion of the Court under Section 19. But, unfortunately, a case under that section does not come before a Commercial Tribunal even though it usually arises on a commercial contract. Moreover, there is no appeal from the Court's opinion given to the Arbitrator on the case on which he seeks advice, so that the complaining party's remedy is the circuitous one of inducing, if he can, the Arbitrator to state his award under Section 7 and to incorporate in it the Divisional Court opinion under the Section 19 case. The complaining party can then move to set aside the award on the ground that it is bad in law on the face of it because the Arbitrator has followed the law as laid down by the Crown Paper Court and that their law is wrong. When this motion comes into the special paper the Court formally states, as mentioned above, that it is bound by the law as laid down by its colleagues on the consultative case, but *then* the complaining party may appeal to the Court of Appeal. If he wins there the award is set aside and the parties have to start all over again with disastrous waste of time and money. The procedure I have ventured to suggest would render impossible such an undesirable result.

Another matter that seems to require legislative attention is the question of costs. A judge is bound to award costs to the successful party unless on judicially maintainable grounds he otherwise orders (see *Ritter* v. *Godfrey*, 1920, 2 K.B. 47). An Arbitrator, however, has an absolutely unfettered discretion as to the manner in which he shall deal with the costs, and there is no method of reviewing such discretion. Moreover, the machinery and generally the practical knowledge of an Arbitrator with regard to costs is very inadequate. My suggestions are that costs should follow the result of the award, unless the Arbitrator for judicial and stated causes otherwise orders, and that the successful party should deliver his bill of costs to the Registrar and send a copy to his opponent. The latter should then have a few days to consider the bill and agree the amount thereof or to require it to be referred to a Taxing Master. If he elects to tax, the Registrar should refer the bill to the Taxing Master, who should have power to make an order for payment of the amount allowed by him plus the costs of the taxation. Provision might be made in order to check excessive demands for costs that if the Taxing Master disallows one-fifth of the bill as delivered he shall deduct from the amount he would otherwise allow one-fifth of the amount which he had disallowed. The Taxing Master should also in such a case disallow the costs of the taxation.

Many arbitrations nowadays are undertaken at the instance of a foreigner who may succeed in putting an Englishman to a great deal of expense in resisting the claim and leave the latter without means of enforcing an award for costs in his favour. It has been held on the authority of *In re Bjornstad*, 1924, 2 K.B. 673, that the Court need not make an order for the appointment of an Arbitrator under Section 5 of the Arbitration Act unless the foreign plaintiff agrees to give security. This roundabout method, however, should not be necessary, and the Registrar should have power to fix security on a foreigner's application for arbitration and to stay the proceedings until such security shall have been given. The same power to order security should be given in the case of an application by a foreign applicant to set aside an award.

Many commercial documents contain a proviso that any dispute arising thereon shall be referred to arbitration and that such arbitration shall be a condition precedent to the commencement of any action at law. A curious result follows from the point of view of the Statute of Limitations. In *Cayzer Irvine* v. *Board of Trade*, 1926, W.N. 260, the Court of Appeal held that time does not, for the purposes of the statute, commence to run against a plaintiff until the arbitration has been held and the award published. A complaining party might therefore wait an apparently unlimited number of years before demanding arbitration, but the Statute of Limitations would not run against him until the Arbitrator should make his award. If parties are to be protected from stale claims an amendment of the Statute of Limitations ought to be made to deal with a case of this kind.

On the question of international arbitration, evidence has already been tendered to the Lord Chancellor's Committee by the Commercial Arbitration Committee of the International Law Association. One important matter dealt with in their proof is as to the absence of the power of the High Court to order a commission to take evidence abroad in an arbitration, but I respectfully submit that where a case is of a nature requiring evidence to be taken abroad it is scarcely a fit matter for arbitration unless the Arbitrator himself is to be the person so appointed to take the evidence and is willing to go abroad for that purpose. They also recommend, and I entirely agree with their recommendation, that delay by an Arbitrator shall be a ground for removing him and appointing another in his place. Similarly they deal with the question of the time at which an award may be enforced and make the reasonable suggestion that the full limit of six weeks should not be available to a defendant if the party in whose favour the award has been given desires to take proceedings to enforce it (subject, of course, to the right of the defendant to counter-claim the setting aside of the award), thereby saving for the successful party the wasting of the six weeks' interval. I have already suggested machinery for the enforcement of awards which would seem to meet this point.

In conclusion, I venture to express the hope that some of my observations and criticisms may be found worthy of attention and perhaps assist in the necessary development and improvement of this branch of the law, so that parties who resort to arbitration may

submit their disputes to a properly qualified arbitral tribunal with perfect confidence that their cause will be fairly adjudged.

The following paper was read by Mr. R. RALPH TREDGOLD (London) :—

THE HONOUR OF THE PROFESSION AND OUR SOCIETY AS ITS GUARDIAN.

The profession with which this paper is concerned is that of a solicitor.

It is not intended to apply to the whole legal profession, which would include Bench and Bar as well as many others.

Many of the quotations made use of, however, refer to " lawyers " generally.

Now the phrase " the honour of the profession " is capable of more than one interpretation, according to the various senses in which the word " honour " is used.

For three ideas are summed up in the word—

Firstly, " Esteem due or paid to worth ";

Secondly, " That which rightfully attracts esteem, that is high " moral worth ";

Thirdly, " A nice sense of what is right, just and true, with a " course of life correspondent thereto."

Can we, speaking for the whole body of solicitors, assert that we have high moral worth and a nice sense of what is right, just and true, and claim the " esteem due or paid to worth "?

After all, we are officers of the Court, part and parcel of a judicial system which is said to be the finest in the world.

One often hears words of highest praise spoken spontaneously of our English Judges, and one feels how well deserved such praise is. The very fact that the Bench is held in such high esteem helps to maintain its high moral worth, and it would be a great help in the maintenance of the honour of our profession if the Council of our Society could feel that solicitors were always held in the highest esteem by the public.

The author of Stephen's Commentaries does well in prefacing his remarks as to solicitors with the observation that " taken as a whole " there is no body of men in the kingdom who are more highly " educated or more industrious than these gentlemen are or more " estimable in their private and in their professional behaviour."

These words made a deep impression on the writer in his youth, and since then hundreds of articled clerks have been impressed by them and have been made to feel that they are about to join an honourable body of men, most estimable in their behaviour. They have thereupon set their faces towards this ideal.

It is remarkable, however, how little is done by our Society (in preparing young men and maidens to be solicitors) to bring before them the honour of the profession, and to ensure that they will foster and maintain it.

Unfortunately it has become the fashion amongst witty and humorous persons to make jokes at the expense of lawyers and to refer to them with a smile as liars, thieves or rogues. Perhaps this will cease now that the profession is enriched by the refining presence of ladies, for you seldom call a lady a thief unless you wish to imply that she has stolen your heart. An instance of this unpleasant fashion occurred, however, in the writer's own experience a few months ago. Travelling across France to Geneva, an American gentleman entered into chance conversation in the train. He mentioned that he was often in London on business and was asked if he knew Lincoln's Inn Fields. " Oh, yes," he replied, " I " have often passed Lincoln's Inn Fields and have thought what a " nest of thieves it is."

When privately asked later what had given him so bad an opinion of solicitors, nothing could be learnt from him, though every effort was made to trace the mental process from which this remark resulted. As a gentleman he admitted that it was a very improper remark for him to have made and apologised for it, adding that it was merely uttered as a joke on the spur of the moment, that he had no bad opinion of solicitors, that he had implicit confidence in his own London solicitor, and so forth.

But it is undoubted that such a remark gave to all who heard it a more or less faint impression (perhaps quite unconsciously received) that English solicitors were not quite what they ought to be.

Moreover, if you turn to the word " lawyer " in a book of quotations you are not likely to find much of a flattering nature and occasionally a scathing indictment. It was rather startling to take a book from the shelves in our own Society's library, and find such unpleasant sentences as those which are included as a quotation from Myron Peck as follows :—

" It is a mistake to suppose that a lawyer always labours for " the interest of his client. It is his own interest he seeks and " rare indeed is the occasion he will not sacrifice his client if he " can put money into his own pocket by so doing."

The first feeling that arises on reading such sentences is a strong desire to write an indignant repudiation across the page in red ink and seek an early opportunity of personal combat with the author.

But as lawyers we must look at the other side of every question, and it is surprising to discover that Peck was himself a lawyer by profession.

He was, however, an American, and as he was born in New York about 100 years ago the lawyers referred to must have been those of that remote period, and we may hope to find that he was not thinking of English lawyers at all.

But we will do well to examine ourselves and see whether it can truly be said that the honour of the profession is such that the personal interests of a solicitor are always and entirely subordinated to those of his client when, as so very often occurs, the two interests are in conflict, and when, probably, the client will feel annoyed with us and perhaps even cease to be a client if we take the course of studying his interests alone, but will feel quite pleased if we take the course which serves our own immediate interests at his expense.

Take, for example, the case of a client who is consumed with the idea of commencing litigation against a neighbour. It may be clear to the solicitor that his client is by no means certain of success. The case would be very profitable to the solicitor in any event. It might, moreover, be an interesting case, which would bring considerable reputation to the solicitor.

In such circumstances it would require real moral effort for a young and optimistic solicitor to refrain from saying " Go up and prosper," though the client's best interests could only be served by giving him a clear vision of the possibility of failure and of the cost and, perhaps, disastrous consequences to him which such failure would entail.

Abraham Lincoln uttered some very emphatic remarks as to the duty of solicitors to restrain the litigious propensities of their clients, when he said—

" Discourage litigation. Persuade your neighbours to compro- " mise whenever you can. Point out to them how the nominal " winner is often a real loser—in fees, expenses and waste of time. " As a peacemaker the lawyer has a superior opportunity of being " a good man;"

and he added that a moral tone ought to be enforced in the profession which would drive out of it such men as would stir up litigation by such methods as habitually overhauling the register of deeds in search of defects in titles.

What, however, does a litigious client think and say about a solicitor who discourages him from commencing a lawsuit? He thinks that such solicitor is a pessimist or a coward, and he probably remarks to the client who introduced him : " I do not like your " solicitor. He has no pluck," and then goes off to some solicitor who will encourage him to commence an action. If he should happen to succeed, he will never tire of telling how the first solicitor discouraged him or of magnifying, at his expense, the pluck and ability of the second, and perhaps less reputable, solicitor.

Conflict between interest and duty may also arise where different methods of procedure are available to attain the same object, one method being, perhaps, very much more profitable to the solicitor than the other, which might, in some ways, be slightly to the advantage of the client.

In litigation this may occur in the choice of tribunal. The solicitor must decide whether the case warrants the expense of a trial in the High Court, or whether he should recommend the cheaper and much more summary method of a trial in the County Court.

A solicitor in the metropolis, and thus in proximity to the Royal Courts of Justice, naturally prefers the High Court. He knows that the system of Pleadings will define the issue to be tried and the points he has to contend with. Moreover, the best Counsel practise there and the Judges are of the greatest eminence.

Again, there are at least a dozen County Courts in Greater London, and the difficulty in conducting cases in several of these at once makes it impossible to give as much attention to them as he can to twice the number in the High Court.

Yet if a solicitor with the interests of his client alone in mind advises High Court proceedings when the case could have been brought in the County Court, he often meets the dishonouring suggestion that he is only thinking of his larger fees in recommending the High Court.

To put himself above suspicion of this a solicitor will sometimes have to agree to do the heavier work involved in a High Court action for the lower remuneration prescribed by the County Court scale, but this is not as it should be.

Similar difficulties arise in conveyancing work. Perhaps a young solicitor may derive most of his income from a large landowner who is gradually selling his land in building lots or small holdings. The solicitor may himself have strong feelings against the intervention of a Government Department in private dealings with land. He will not fail, however, to put fairly before his client the provisions of the Land Transfer Acts and the arguments for and against the recording of his client's title at the Land Registry.

If the client should decide to register, the solicitor's income from the conveyancing would be cut down by one-half. This might render it difficult for him to make both ends meet, but this fact will not deter him from his duty.

It is seldom, however, that clients appreciate how completely a solicitor has to ignore his own immediate interests in such matters. During the present summer, a solicitor was heard to say that generally when he had considered it advantageous to have a title recorded at the Land Registry and had so advised, such advice had been ignored. It appeared that his clients gained the impression in recommending registration the solicitor was thinking of the small additional fees he would receive on the first registration, whereas (with full knowledge of the consequences to himself) the solicitor had been

suggesting (in his client's interests) a procedure which would very much reduce his own fees in future and transfer to the Government (as official fees) a greater proportion of what the client had to pay.

While referring to the Land Registry, it may not be inopportune to make the observation that no applications for registration ought to be received except through solicitors, or, if personal applications be received at all, the applicant should be charged fees slightly in excess of the very small percentage which would be charged to him by a solicitor, say one guinea per £100 on the consideration.

Think of the loss of time (and of expense in the salary of officials) which is incurred when a layman is being conducted through the process of land registration, as compared with the speedy manner in which an application is dealt with when all the papers are presented by a competent solicitor, who thoroughly understands both the law and the rules of the Registry.

As a refutation of the suggestion sometimes made that solicitors for reasons of self-interest prevent their clients recording their titles at the Land Registry, it should be mentioned that in spite of the widespread feeling in favour of *private* dealings in property (without the necessity of furnishing a Government Department with full particulars), between 15,000 and 16,000 dealings in land through the Land Registry were carried out by solicitors in non-compulsory areas last year. Most of these transactions took place at a time when carrying out the transaction through the Registry meant that the solicitors received only about one-fifth of the fee which they would have received if the transaction had been effected off the register. This could never have occurred if the solicitors had not been prepared totally to disregard their own immediate interests.

I say *immediate* interests, for it cannot be too often repeated that the real interests of a solicitor can never conflict with those of his client, for it is always against the best interests of any solicitor to depart from his ideal and put his own material interests first.

Psychologists nowadays are agreed that happiness is only to be found in self-realization according to the ideal that each individual forms for himself, and that any conscious falling short of that ideal or temporarily following some lower ideal causes a sense of failure and incompleteness which (though often unrecognized) is quite destructive of real contentment.

We all realize that an ideal or perfect solicitor, when acting for clients, would not be moved consciously or unconsciously by his personal interests, any more than would a perfect soldier be deflected from his duty by a hair's breadth by any thought that the performance of it may mean mutilation or death. Such a soldier might have a shorter life than that of one who put his own interests first, but the life of the latter would not be worth living compared with his.

Until a comparatively recent period members of our profession were styled "Attorneys-at-law." This designation reminded our predecessors that they stood in the place of their clients. It helped them to identify themselves with their clients and to conduct their clients' business as they would conduct their own, remembering the added responsibility of the trust imposed in them.

But while it is easy and perhaps helpful to reason out in this way what our standard of conduct should be, it is by no means easy to follow the higher and resist the strong attractions of the lower ideal.

This is clearly recognized in the "Canons of Professional Ethics of the American Bar Association," which commence with a passage from George Sharswood, as follows :—

> "There is certainly without any exception no profession in which so many temptations beset the path, to swerve from the line of strict integrity, in which so many delicate and difficult questions of duty are continually arising. There are pitfalls and mantraps at every step, and the mere youth at the very outset of his career needs often the prudence and self-denial as well as the moral courage which belong commonly to riper years. High moral principle is the only safe guide, the only torch to light his way amidst darkness and obstruction."

No one would venture to deny the truth of this, and yet how little enquiry is made into the moral character of men and women seeking to be admitted solicitors, and how little are high moral principles inculcated or enjoined during their training.

Is it surprising in these circumstances that our ranks are sometimes invaded by those whom the author of Stephen's Commentaries refers to as "the evil-intentioned"?

An evil-intentioned solicitor is certainly one of the most dangerous and odious of men and if one out of every thousand solicitors had it in mind to use his position entirely for his own enrichment, without regard to the interests of those he represented, it would be quite enough to dispose of the honour (or esteem) accorded to the profession as a whole.

One may recollect the old rhyme of the 17th century wit Samuel Butler :—

> "Honour is like the glassy bubble
> Which cost philosophers some trouble,
> Where, one part cracked, the whole does fly,
> And wits are cracked to find out why."

But the honour of the profession requires a great deal more than mere lack of evil intention. In fact, in most of the cases which have disgraced our profession and in which the solicitor has misappropriated trust funds and the like, the trouble has not originated in deliberate evil intention, but the cause has been mere love of display or a lack of moral courage or stamina in the face of misfortune. In others, the cause has been a combination of optimism and carelessness.

Perhaps a solicitor's profits have not come up to expectation, while his commitments were based on an optimistic view of his prospects. His optimism prompts him to say :—"Why bother the wife to cut down expenditure. I will make it up next year, and there is plenty of money at the Bank."

He becomes careless, but there is an inevitable shortage, and he finds himself relying upon one client's money to provide the funds to pay out another.

It may be many months later when he awakes one night in a cold perspiration and realises that he is a criminal guilty of embezzlement of trust funds, liable to a long term of imprisonment and certain to be struck off the rolls in disgrace as soon as his crime becomes known.

Moreover, if one turns to the pages of Charles Dickens, where the moral shortcomings of solicitors of his day are set forth in a realistic though humorous manner, we find again that their delinquencies arose more frequently from the solicitor having no high ideal, than from any deliberate evil intention.

The conduct of Messrs. Dodson & Fogg in the case of *Bardell* v. *Pickwick* was not dictated by actual evil intention. Their intention was to get money and to gain such reputation as would enable them to make more. People who thought they could persuade a jury that they had been wronged by some wealthy person would, no doubt, flock to Messrs. Dodson & Fogg's office when they had succeeded in such a flimsy case as that.

Very often a solicitor's faults arise from the best intentions, as when, with the sole view of benefiting his client, he is tempted to conceal facts or deliberately to allow a Court of Justice to come to an erroneous decision as to the facts.

It is a great temptation to a young solicitor to be crafty and clever. This again is recognized by the American Bar Association, for the quotation from Sharswood is followed by a quotation from Ryan, of Wisconsin, as follows :—

> "Craft is the vice, not the spirit, of the profession. Trick is professional prostitution. Falsehood is professional apostacy. The strength of a lawyer is in thorough knowledge of legal truth, in thorough devotion to legal right. Truth and integrity can do more in the profession than the subtlest and wiliest devices. The power of integrity is the rule; the power of fraud is the exception. Emulation and zeal lead lawyers astray, but the general law of the profession is duty, not success. In it, as elsewhere in human life, the judgment of success is but the verdict of little minds. Professional duty faithfully and well performed is the lawyer's glory."

Unfortunately, lawyers have obtained more reputation for being crafty than for being honourable. This again is brought out clearly by Charles Dickens in "Bleak House," in the remarks which he puts into the mouth of Mr. George in custody on a false charge of murder. The following is Dickens's account of the conversation :—

> "'You won't have a lawyer?' 'No, sir,' Mr. George shook his head in a most emphatic manner. 'I thank you all the same, sir, but—no lawyer!' 'Why not?' 'I don't take kindly to the breed,' said Mr. George."

Then Mr. George imagines what would have happened if he had been guilty, and enquires :—

> "'What should I have done as soon as I was hard and fast here? I should have got a lawyer, and he would have said 'my client says nothing, my client reserves his defence—my client this that and t'other. Well; 'tis not the custom of that breed to go straight, according to my opinion, or to think that other men do. Say, I am innocent, and I get a lawyer. He would be as likely to believe me guilty as not; perhaps more. 'What would he do, whether or not? Act as if I was—shut my mouth up, tell me not to commit myself, keep circumstances back, chop the evidence small, quibble, and get me off perhaps! 'But what do I care for getting off in that way; I would rather be hanged in my own way. I must come off clear and full or not at all. Therefore, when I hear stated against me what is true, I say it's true; and when they tell me, "whatever you say will be used," I tell them I don't mind that; I mean it to be used. If they can't make me innocent out of the whole truth, they are not likely to do it out of anything less, or anything else. And if they are, it's worth nothing to me.'"

Could there be a more striking picture of the dangers of using craft or subtlety in the supposed interests of clients.

Now having regard to the special difficulties of the profession, should not we as a Society, having the guardianship of its honour, do more than we have done—

Firstly: To prove to the world that such honour exists;
Secondly: To see to the maintenance of such honour; and
Thirdly: To foster and improve such honour by setting before all those who intend to enter the profession a high standard of professional ethics, and take the greatest care that no evil-intentioned person should enter our ranks.

Now, what steps can be taken to establish to the world the honour of the profession?

It seems that one step is very necessary, difficult though it may be. It is that our Society should absolutely guarantee the public against loss by the fraud of any solicitor.

Some twenty years ago an attempt was made to protect the public against the fraud of solicitors by insisting on certain audits of their accounts, or that solicitors should make a statutory declaration annually that they had kept a separate account of clients' moneys, and that all such moneys were available for the clients concerned. The proposal was not carried, and the gentleman who led the opposition to it remarked that if, by adopting this proposal, they proclaimed to the world that the honesty of the profession was at such a low ebb that it required to be stimulated once a year by making such a declaration the public would say that solicitors were a bad lot and the sooner strong measures were taken with regard to them the better.

If such proposal had been carried no doubt our profession would have temporarily lost honour (in the sense of esteem accorded to it) in the way suggested, but might it not possibly have gained honour (in the higher sense of real moral worth) if its best members had consented to submit to indignities to prevent its worst members from doing harm.

But surely the public can be safeguarded by means that do not in any way dishonour the profession, but on the contrary proclaim it as being essentially honourable.

It may be well that our Society should begin by undertaking to indemnify the public against any loss incurred by the fraud of any solicitor who is a member of the Society in future and take out a policy against liability under such indemnity, or the members might undertake individual responsibility to a limited sum in case of any such large losses as would deplete the Society's funds.

This would raise the prestige of such solicitors as were members of the Society, who could distinguish themselves by adding the letters M.L.S. to their names, and it would doubtless induce many others to join.

Afterwards, provision could be made that every articled clerk should, on admission or before being allowed to practise independently, deposit with the Society a substantial sum, or at least give a bond to the Society conditioned against fraud.

Moreover, special supervision might be kept over young solicitors during the first three years of their practice, when they might be kept under obligation to submit to an annual audit of their accounts, and undergo such discipline as was proposed twenty years ago for all members of the profession. A solicitor carefully started on the right lines as regards the keeping of accounts would be much less likely to fall into careless habits than one who was allowed to start without any such supervision.

Again, instead of suspending a solicitor from practice for six months or so for minor professional delinquencies the Society might compel him to submit to similar supervision and discipline for as many years.

No more tangible proof of integrity could be given to the public than a guarantee, and perhaps little could be done beyond this to prove the existence of the honour of the profession, except to insist that members of the Society should not allow their honour to be challenged without taking care to refute the charge, and the Society should be ready and willing to support individual members in this.

Some members of the working classes and others consider that they may with impunity write the most scurrilous abuse to any solicitor who, for instance, has been compelled to write to them a letter of demand for payment of a debt, or complaining of some trespass or other infringement of a client's rights. When such communications are intended to be mere insults they can be ignored, but when they are of another type and the writer of such a letter appears to be labouring under a *bonâ fide* misapprehension, it is worth while taking the time and trouble to make him understand clearly that the views he has expressed are not justified, and that he has acted very improperly in writing them.

In suitable cases a solicitor might request The Law Society to follow up his own letter and explain that if there is any just complaint the Society will hear it, and that if not an apology is due to the solicitor.

Now, solicitors have to act for all sorts and conditions of people, and it may be that the abuse heaped upon the solicitor is really meant for his client, and perhaps the circumstances are such that if such letter had been written direct to the client some excuse could be made for it. If so, it is of more importance that the public should recognize that a solicitor is a member of an honourable profession, assisting in the administration of justice, and that, whether such solicitor is seeking justice for a worthy client or for a burglar wrongly accused of murder, he should be treated as a gentleman doing his duty, and should not, in the latter case, be addressed as though he were a confederate in any crime his client may have committed.

To maintain the honour of the profession, our Society should work steadfastly to remove, as far as possible, the difficulties of solicitors, by seeing that their remuneration, and other personal matters in their practice, are so ordered as to conflict as little as possible with the best interests of their clients. Of course, a good deal has been done in this direction, for instance:—

(1) The method of remuneration in conveyancing by a scale of charges for the whole work, instead of discouraging solicitors in conciseness by cutting down their remuneration if they manage to cut down the length of a deed of conveyance;

(2) The permission given to solicitors to make a fair agreement for remuneration by a lump sum in other matters, instead of merely charging for each letter written and attendance made, without much regard to the real benefit thereof to the client;

(3) The increase of the solicitors' fees, and reduction of some of the registry fees in the case of transactions at the Land Registry.

It would be well, however, if solicitors would make a practice of bringing definitely before The Law Society any matter of law or practice which promotes a conflict between a solicitor's duty and his immediate interests or causes moral difficulty, in order that the Council should consider whether anything can be done towards preventing such conflicts or removing these special difficulties.

(To be continued.)

Solicitors Benevolent Association.

ANNUAL MEETING.

Sir William Bull presided at the annual meeting of this association which was held at the Council House, Birmingham, on 29th September. The report of the directors for the year ending 30th June last, stated that the membership of the association now numbered 4,931, of whom 1,182 were life members and 3,749 annual subscribers. 138 of the life members were also annual subscribers, and 77 firms were annual subscribers. The association had lost during the year 109 subscribers through death and 54 through withdrawals. 546 new subscribers had been obtained, making a net gain of 383. With the object of increasing the membership and the funds of the association and thus enabling the directors to deal more adequately with the lamentable cases of poverty which came before the board in ever increasing numbers, two appeals were made during the past year; one to existing subscribers to increase their minimum subscriptions from £1 1s. to £2 2s., and another to all members of the profession who were not subscribers in the hope of inducing them to join the association. As a result of these appeals some 240 members had increased their subscriptions, and over 500 new members had joined. As compared with the previous year the total sum received from donations showed an increase of £683 13s. 6d. life membership subscriptions, an increase of £281 19s., and annual subscriptions of £1,135 9s. 6d. This was doubtless encouraging, but it was obvious from the fact that out of some 15,000 solicitors on the Roll 4,931 only were members, that the association was not receiving from the profession, as a whole, the support which it had a right to expect. The following legacies had been received during the year: £250 under the will of Mr. G. H. Naunton; £100 under the will of Mr. J. Leslie G. Powell; £45 under the will of Mr. E. Allin; £100 under the will of Mr. R. H. Carpenter; £125 under the will of Mr. A. Pointon; £100 10s. 8d. under the will of Mr. A. Trinder; and £100 under the will of Mrs. S. A. Bescoby. The total relief granted during the year amounted to £11,308 5s., of which £5,207 12s. 6d. was allotted to members and families of members, and £6,100 12s. 6d. to non-members and families of non-members. This was an increase of £1,764 6s. 9d. over the previous year. The number of cases relieved was 300, as compared with 251 the year before, the average grant being less than £38. Of these grants 255 were made from the General fund, the remainder from 15 special funds founded by generous supporters and friends in the past. As in many cases the help given by the association was the recipients' only means of support, the funds at the disposal of the directors were manifestly quite inadequate. These facts showed the urgent necessity for additional subscribers and increased funds, and the directors therefore trusted that members of the association would take every opportunity of bringing their personal influence to bear upon those members of the profession who were not subscribers to become such. On the motion of the chairman the report was agreed to unanimously.

United Law Society.

A complimentary dinner was given by members of the United Law Society, at the Monico Restaurant, on the 28th September, 1926, to The Honourable Mr. Justice Blackwell and Mrs. Blackwell, in honour of Mr. Justice Blackwell's recent appointment to the Indian Bench. Mr. L. F. Stamp was in the chair.

After the Chairman had submitted the Loyal toasts, he proposed the toast of "Our Guests," to which Mr. Justice Blackwell replied. The other speakers included Mr. J. R. Yates and Dr. Bischop. There was a good attendance of ladies.

Law Students' Journal.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Hall, on Tuesday, the 5th inst. (Chairman, Mr. John F. Chadwick), the subject for debate was: "That this House condemns the action of the Government in dealing with the coal dispute." Mr. H. Shanly opened in the affirmative. Mr. H. Malone opened in the negative. The following members also spoke: Messrs. C. F. S. Spurrell, H. M. Pratt, A. Phillips, J. W. Morris, W. S. Jones, John F. Chadwick and R. D. C. Graham. The opener having replied, and the Chairman having summed up, the motion was lost by seven votes. There were sixteen members and two visitors present.

Rules and Orders.

THE ENFRANCHISED LAND (CERTIFICATE OF ENDORSEMENT) REGULATIONS, 1925, DATED JULY 29, 1925, MADE BY THE MINISTER OF AGRICULTURE AND FISHERIES UNDER THE POWERS VESTED IN HIM BY SECTIONS 129 AND 189 OF THE LAW OF PROPERTY ACT, 1922 (12 & 13 GEO. 5. C. 16).

1. The Minister of Agriculture and Fisheries in exercise of the powers conferred upon him by section 129 of the Law of Property Act, 1922, and of every other power enabling him in this behalf hereby prescribes that the certificate to be endorsed by a steward of a manor on an assurance of enfranchised land or of any interest therein produced to the steward pursuant to the provisions of the said section shall be made by a statement in the form set forth in the Schedule hereto or to the like effect, or by a stamp to be signed and dated as set forth in such Schedule. Provided that where the duties of the steward have been transferred to the Land Registrar the forms shall apply with such alterations as may be necessary consequent on the substitution of the Land Registrar for the Steward and the Statement or Stamp may be signed by the Land Registrar or by any officer of His Majesty's Land Registry appointed by him for that purpose.

2. These Rules shall come into operation on the First day of January, Nineteen hundred and twenty-six, and may be cited as the Enfranchised Land (Certificate of Endorsement) Regulations, 1925.

3. These Rules do not extend to Scotland or Ireland.

In witness whereof the Official Seal of the Minister of Agriculture and Fisheries is hereunto affixed this twenty-ninth day of July, Nineteen hundred and twenty-five.

(L.S.) *F. L. C. Floud*,
Secretary.

Schedule.

FORM OF STATEMENT.

I, the steward of the Manor of in the Parish of in the County of in pursuance of the provisions of section 129 of the Law of Property Act, 1922, hereby certify that the within-written assurance of (an interest in) enfranchised land held of the said Manor was produced to me before the expiration of (six months from the date of its execution) (the extended period allowed by Order of the Court dated day of 192).

, 19 .

Signature of Steward.

Form of Stamp.

Produced as required by section 129 of the Law of Property Act, 1922.

Steward of the Manor.

, 19 .

THE NON-CONTENTIOUS PROBATE (COMMISSIONERS FOR OATHS) RULES, 1926. DATED 1st SEPTEMBER, 1926.

I, the Right Honourable Henry Edward Baron Merrivale, President of the Probate, Divorce and Admiralty Division of the High Court of Justice, with the concurrence of the Right Honourable George Viscount Cave, Lord High Chancellor of Great Britain, and the Right Honourable Gordon Baron Hewart, Lord Chief Justice of England, by virtue of section 100 of the Supreme Court of Judicature (Consolidation) Act, 1925,(*a*) and all other powers enabling me in this behalf, hereby order as follows:—

1. In these Rules:—

"The Principal Registry Rules" means the Rules and Orders and Instructions for the Registrars of the Principal Registry of the Court of Probate in respect of Non-Contentious business, dated the 30th day of July, 1862,(*b*) as amended by any subsequent Rules:

"The District Registry Rules" means the Rules and Orders and Instructions for the Registrars of the District Registries of the Court of Probate, dated the 27th day of January, 1863,(*c*) as amended by any subsequent Rules."

2. The following Rule shall stand as Rule 123 in the Principal Registry Rules, and as Rule 116 in the District Registry Rules:—

"Notwithstanding anything in the Order dated the 11th February, 1874, as to the costs to be allowed to Proctors, Solicitors and Attorneys practising in non-contentious business,(*d*) the following items may be allowed on taxation of costs in non-contentious business as disbursements made to Commissioners for Oaths:—

	£	s.	d.
For each Oath administered to each deponent by a Commissioner for Oaths	0	2	0
For each exhibit referred to in the affidavit and required to be marked	0	1	4
For each obligor to a Bond the execution of which has been superintended and attested by a Commissioner for Oaths	0	2	0."

3. These Rules may be cited as the Non-Contentious Probate (Commissioners for Oaths) Rules, 1926, and the Principal Registry Rules and the District Registry Rules shall have effect as further amended by these Rules.

Dated the 1st day of September, 1926.

Merrivale.

We concur.
Cave, C.
Hewart, C.J.

(*a*) 15 & 16 Geo. 5, c. 49.
(*b*) S.R. & O. Rev. 1904, XII, Supreme Court, E, p. 756.
(*c*) *Ibid*, at p. 829.
(*d*) *Ibid*, at pp. 794–802.

THE REDEMPTION OF RENTS RULES, 1925, DATED 30TH JULY, 1925, MADE BY THE MINISTER OF AGRICULTURE AND FISHERIES UNDER THE POWERS VESTED IN HIM BY SECTION 191 (9) OF THE LAW OF PROPERTY ACT, 1925 (15 GEO. 5, C. 20).

The Minister of Agriculture and Fisheries in exercise of the powers conferred upon him by sub-section (9) of section 191 of the Law of Property Act, 1925, and of every other power enabling him in this behalf hereby makes the following Rules for regulating proceedings to be taken under the said section and as to the manner in which costs of such proceedings are to be borne by the respective parties.

In witness whereof the Official Seal of the Minister of Agriculture and Fisheries is hereunto affixed this thirtieth day of July, nineteen hundred and twenty-five.

(L.S.) *F. L. C. Floud*,
Secretary.

Schedule.

PART I.

1. *Requisition for redemption.*]—(1) A requisition by the owner of any land or any person interested in such land made under Section 191 of the Law of Property Act, 1925, to the Minister of Agriculture and Fisheries (hereinafter called "the Minister") shall be in the form A set forth in Part II of this Schedule or to the like effect.

(2) The rents to which such requisitions are applicable are—

(*a*) a quit rent, chief rent or other annual or periodical sum issuing out of land; or

(*b*) a rent reserved on a sale, or made payable under a grant or licence (not operating as an agreement for a lease or tenancy) for building purposes; or

(*c*) a compensation rentcharge created as the consideration for the extinguishment of manorial incidents.

2. *Application for apportionment on redemption.*]—Where any person interested in the whole or any part of the land affected by the rent to which the requisition relates desires to effect a discharge of part of the land, and the remainder of the land is not exonerated or indemnified from the rent by means of a charge on the aforesaid part, and an application is made by any such person to the Minister under subsection (7) of the said section the application shall be in the form B set forth in Part II of this Schedule, or to the like effect.

3. *Signature of requisition or application.*]—Any requisition or application by a corporation to which these Rules apply may be signed by the secretary or the clerk of the corporation, and in any other case may be signed by the owner or person

interested in the land or part thereof or by his solicitor or by any other person authorised in that behalf.

4. *Notices.*]—(1) Any person requiring the Minister under the said section to certify the amount of money in consideration whereof a rent may be redeemed shall serve a copy of his requisition on the person entitled to the rent and any applicant to the Minister under the said section for an apportionment of a rent shall serve a copy of his application on the person entitled to the rent and on each person, other than the applicant, who is interested in the land out of which the rent issues or any part of such land.

(2) A copy of a requisition or application by these Rules required to be served on any person shall be sufficiently served—

(*a*) by leaving the copy at the usual or last known place of abode or business in the United Kingdom of such person; or

(*b*) by sending the copy by post in a registered letter addressed to such person at that place unless the letter is returned through the post office undelivered; or

(*c*) where service cannot be effected in manner aforesaid by such other mode of service as the Minister may direct.

5. *Statutory declaration as to title.*]—For the purposes of any proceedings under the said section the Minister may accept as sufficient evidence of the title to the rent a statutory declaration by the person in receipt of the rent or his solicitor stating—

(1) the nature and extent of such person's estate and interest in the rent;

(2) the date and short particulars of the instrument under which his estate or interest is derived;

(3) the names and addresses of the trustees, if any, under such instrument; and

(4) the incumbrances, if any, affecting the rent.

6. *Costs.*]—The costs of proceedings for the redemption or apportionment under the said section of any compensation rentcharge created as the consideration for the extinguishment of manorial incidents shall be dealt with on the same footing as the expenses incurred in redeeming a mortgage; and the costs of proceedings for the redemption or apportionment of any other rent under the said section shall be borne by the person making the requisition or application, unless the Minister considers that the conduct of the other party has been unreasonable or that that party has unreasonably refused a proposal made by the person making the requisition or application, in which case the Minister may disallow the payment of the whole or any part of the costs incurred as the Minister may consider just.

7. *Short Title.*]—(1) These provisions shall come into operation on the first day of January, nineteen hundred and twenty-six, and may be cited as the Redemption of Rents Rules, 1925.

(2) These provisions do not extend to Scotland or Ireland.

Part II.

Ministry of Agriculture and Fisheries.

Forms of Requisition for Redemption and Application for Apportionment.

Form A.

Redemption of a Rent under Section 191 of the Law of Property Act, 1925.

Requisition by Owner of Land or a Person interested therein.

Whereas a rent amounting to ..... per annum issues out of the lands described in Part I. of the Schedule hereto.

Now I, being the owner of the said lands or a person interested therein, do hereby require the Minister of Agriculture and Fisheries to certify the amount of money in consideration whereof the said rent may be redeemed (*or* the part of the said rent to be apportioned on the lands described in Part II of the Schedule hereto may be redeemed).

Dated this day of , 192 .

..... } Signature and
..... } Address.

The Schedule.

Part (1).

Short description of Lands charged with the Rent.	Date and short particulars of instrument creating the Rent.

Part (2).

Short description of Lands proposed to be discharged from the Rent.

1. State the name and address of the owner of the rent.
2. State the name and address of the collector of the rent.
3. State whether the rent is
   (*a*) a quit rent, chief rent or other annual or periodical sum; or
   (*b*) a rent reserved on a sale or made payable under a grant or licence (not operating as an agreement for a lease or tenancy) for building purposes; or
   (*c*) a compensation rentcharge created as the consideration for the extinguishment of manorial incidents.
4. Is the rent perpetual or terminable? If terminable, state the period for which it is payable and the date on which it terminates.
5. Is the rent payable yearly, half-yearly or otherwise?
6. State the nature of the interest in the land of the person making this requisition.
7. Has a copy of this application been served on the person entitled to the rent in accordance with paragraph 4 of Part I of the Redemption of Rents Rules, 1925?

Note.—Section 191 of the Law of Property Act, 1925, does not apply to tithe rentcharge or a charge or other payment redeemable under the Tithe Acts, 1836 to 1918, or to a rent reserved by a lease or tenancy.

Form B.

Apportionment of a Rent under Section 191 of the Law of Property Act, 1925.

Application by a Person interested in the Whole or a Part of the Land.

Whereas a rent amounting to ..... per annum issues out of the lands described in Part I of the Schedule hereto;

And whereas I, the undersigned, of , being interested in the whole or a part of the land affected by the said rent desire to effect a discharge of the part of the land described in Part II of the said Schedule;

And whereas the remainder of the land is not exonerated or indemnified from the rent by means of a charge on the aforesaid part;

Now I do hereby apply to the Minister of Agriculture and Fisheries to apportion by a certificate the said rent between the part of the land described in Part II of the Schedule hereto and the remainder of the land affected by the said rent in accordance with the provisions of Section 191 of the Law of Property Act, 1925.

Dated this day of , nineteen hundred and .

..... } Signature and
..... } Address.

The Schedule.

Part (1).

Short description of Lands charged with the Rent.	Date and short particulars of instrument creating the Rent.

Part (2).

Short description of Lands proposed to be discharged from the Rent.

The following particulars should be supplied, either in the margin or on separate paper.

1. State the full name and the address and legal description of the applicant.
2. Is the applicant owner in possession of the whole or of part only of the land? What is his estate or interest therein?
3. Give the names and addresses of the other persons (if any) interested in the lands or any part thereof.
4. State the name and address of the person entitled to the rent.
5. State the name and address of the collector of the rent.
6. If all the persons interested in the lands have agreed as to what amounts should be apportioned as between the part of the land which it is desired to discharge from the rent and the remainder of the land, state such amounts.
7. Will the remainder of the land provide adequate security for the apportioned amount of the rent so agreed to be charged upon it? If it is separately assessed for rating purposes, state its rateable value.
8. If all the persons interested in the lands have not so agreed, the following information should, if possible, be supplied:—
   (*a*) By whom has the rent been paid and up to what date?
   (*b*) Has the rent been continuously paid by one of the persons interested in the lands?
   (*c*) If so, give the name and address of such person, and state the reason for such continuous payment by one person.
   (*d*) Has any part of the land been sold in plots subject to the condition that the rent should be borne by any particular plot or plots, to the exemption of the remainder?
   (*e*) Has any other arrangement been made relative to the rent as among the persons interested in the land?
   (*f*) If the sale was not made subject to any such condition, state the amount of the purchase price of each of the plots.
9. Is there any arrangement for an apportionment which is binding on the owner of the rent?
10. A plan, preferably on a $\frac{1}{2500}$ scale Ordnance sheet, on which the boundaries of that part of the land in respect of which it is desired to effect a discharge are defined by an edging of colour, should be furnished, except where the lands can otherwise be clearly identified.
11. Has a copy of this application been served in accordance with paragraph 4 of Part I of the Redemption of Rents Rules, 1925, on the person entitled to the rent and on each person other than the applicant, who is interested in the land out of which the rent issues or any part of such land?

Legal Notes and News.

Appointments.

Sir STANLEY FISHER, Chief Justice of Trinidad, has been appointed Chief Justice of Ceylon. Sir Stanley Fisher was called to the Bar by the Inner Temple and by Lincoln's Inn in 1890, appointed President of the District Court of Kyrenia (Cyprus) in 1902, and until recently held the appointment of Chief Justice of Trinidad.

Mr. E. C. S. WADE, M.A., LL.M., Barrister-at-Law, Vice-Principal of The Law Society's School of Law, has been appointed Principal and Director of Legal Studies, in succession to Mr. E. Leslie Burgin, LL.D., who is unable to continue the work in consequence of pressure of business. Mr. Wade—who was called by the Inner Temple in 1902—was educated at St. Laurence College and Gonville and Caius College, Cambridge, graduated, with first-class honours in the Law Tripos in 1920, and was called by the Inner Temple in 1922.

The Chief Justice of the Irish Free State has appointed Mr. CAHIR DAVITT, Barrister-at-Law, to be Standing Arbitrator to hear and determine appeals provided for by Clause 8 of the Third Schedule of the Railways Act, 1924, in succession to Mr. Arthur C. Meredith, K.C., who has resigned.

Mr. BEAUMONT T. JAMES, solicitor, Bridge-buildings, Barnstaple, has been appointed Clerk to the Torrington Rural District Council. Mr. James—who was admitted in 1883—also holds the appointment of Deputy Coroner for the Borough of Barnstaple.

Mr. CHARLES N. DIGBY-SEYMOUR, B.A., solicitor, of the firm of Messrs. William Francis & Co., 5, St. Mary's-place, Newcastle-on-Tyne, has been appointed Assistant Solicitor in the office of Mr. F. H. C. Wiltshire, Town Clerk of Birmingham. Mr. Digby-Seymour was admitted in 1920.

Partnerships Dissolved.

WYKEHAM PARRY and JOHN ARCHER, solicitors, Blackpool, Lancaster (H. I. Parry, Son and Archer) by mutual consent, as from 1st March, 1926. The business will be carried on in future by W. Parry under the style H. I. Parry & Son.

JOSHUA ALFRED VARDY, ARTHUR EDWARD DOWLEY and JOHN TOPHAM BROWN, solicitors, 56, Finsbury-pavement (Geo. Brown, Son & Vardy), as from 31st December, by mutual consent so far as the said J. A. Vardy is concerned. A. E. Dowley and J. T. Brown will continue to carry on business as solicitors at 56, Finsbury-pavement, under the style of Geo. Brown, Son & Vardy.

FRANK KIMBER BULL, THOMAS WALTER HOWLAND, MONTAGUE BURCHER CLAPPÉ and GWYN HOWARD DAVIES, solicitors, 6, Old Jewry (Kimber Bull, Howland, Clappé and Co.), by mutual consent as from 25th September. F. K. Bull, T. W. Howland and M. B. Clappé will continue the business under the style of Kimber Bull, Howland, Clappé and Co.

Wills and Bequests.

Mr. Edward Morris Gibson, solicitor, of Mulgrave-road, Sutton, Surrey, and of Queen-street, Cheapside, E.C., who died on 14th July, aged seventy-eight, left £13,687, with net personalty £12,072. He left (*inter alia*) £400 to the Sutton Hospital; £100 to Alfred Prince Bishop, clerk; £50 to Marjorie Buckingham, clerk; and £100 to Sylvia Grey, his wife's companion.

Mr. Alexander Dingwall Ross, solicitor, of Cluny-place, Edinburgh, left personal estate in Great Britain of the gross value of £2,092.

Mr. Arthur Cecil Smith, solicitor (66), of St. Leonards, Weston-road, Bath, left estate of the gross value of £34,004.

RE-OPENING OF THE ROYAL COURTS OF JUSTICE.

A votive Mass of the Holy Ghost (the "Red Mass") will be said at Westminster Cathedral on the occasion of the re-opening of the Royal Courts of Justice, on Tuesday next, the 12th inst., at 11.30 a.m. His Eminence Cardinal Bourne and Mr. Justice Russell will attend.

A robing room will be at counsel's disposal at the Cathedral.

THE BETTING TAX.

The Commissioners of Customs and Excise have issued a preliminary notice with regard to the Betting Duty, which will come into operation on 1st November.

The duty will apply to every bet made with a bookmaker, on any event of any kind, and each bookmaker will be required to take out annually a certificate for which a duty of £10 will be payable. Bookmakers are requested to apply as soon as possible for forms of application for certificates, which are obtainable from collectors of Customs and Excise. A photograph of the applicant must be forwarded for fixing to the certificate, which will show the true name and the trade name and which must be produced on demand by any authorised person.

A limited company will be required to take out a certificate in the registered name of the company, and any directors or employees of the company who may act as bookmakers on a racecourse will be required to take out personal certificates in their own names. Each partner of a firm, not being a limited company, must have a personal certificate in his own name. Certificates will expire on 31st October in each year.

An entry certificate will be required to be taken out annually by a bookmaker on payment of a duty of £10 in respect of any betting premises used by him. Forms on which entry of premises may be made will be obtainable from collectors of Customs and Excise. The bookmaker will be required to insert in the form of entry a description of the betting premises, and he will not be allowed to carry on an office business except on premises duly entered. Authorised officers will have the right to inspect such premises at any time for the purpose of revenue supervision.

Duty will be chargeable at the rate of 2 per cent. of the amount staked in the case of bets which fulfil all the following conditions: (*a*) the event must be a horse race; (*b*) the bet must be made on a ground used for the purpose of racing with horses, or any ground adjacent thereto; (*c*) the bet must be made on a day on which horse-racing takes place on such ground; (*d*) both the bookmaker accepting and the person making the bet must be in personal attendance at that ground. In the case of every other bet made with a bookmaker, the duty will be at the rate of 3½ per cent. of the amount staked.

The bookmaker will be the person responsible for payment of the proper duty, and there will be two methods by which a bookmaker may pay the duty, by returns to the Commissioners or by the use of revenue tickets. It will be open to any bookmaker, whether operating in an office or on the course, to apply to the Commissioners for permission to pay by returns. As a condition of the grant of such application the bookmaker will be required to give bond with one or more satisfactory sureties for due payment of duty. Such sureties may be private individuals or surety may be given through an approved guarantee society. Under such an arrangement a bookmaker will furnish returns at weekly intervals of all bets received by him and pay at such intervals the appropriate amount of duty. The bookmaker will be required to keep proper books and records for official inspection. The amount of duty payable will be calculated by reference to such returns and records. No revenue tickets will be required. Bookmakers who do not enter into an arrangement for payment of duty by means of returns, must pay duty by the purchase of revenue tickets.

The notice draws special attention to s. 15 (2) of the Finance Act (Betting Duty), 1926, which provides that "nothing in this part of this Act shall operate so as to render lawful any betting in any manner or place in which it is at the commencement of this Act unlawful, or so as to authorise the writing, printing, publication, or sending of any notice, circular, or advertisement which is at that time unlawful." It is also pointed out that the issue of a certificate to a bookmaker and the use by him of revenue tickets for the duty do not connote any change in the existing legal position as to betting contracts, nor do they carry any Government guarantee of the character or financial position of the bookmaker. The use by bookmakers, on notepaper or in circulars, advertisements, etc., of any statements implying official guarantee of *bona fides* will not be allowed.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 5%. Next London Stock Exchange Settlement, Thursday, 14th October, 1926.

	Middle Price 6th Oct.	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 2½%	54⅜	4 12 0	—
War Loan 5% 1929-47	101$^{3}/_{32}$	4 19 0	4 19 0
War Loan 4½% 1925-47	95	4 15 0	4 19 0
War Loan 4% (Tax free) 1929-47 ..	99⅞	4 0 0	4 0 0
War Loan 3½% 1st March 1928 ..	98	3 12 0	4 18 0
Funding 4% Loan 1960-90	84½	4 15 0	4 16 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years ..	92½	4 7 0	4 8 6
Conversion 4½% Loan 1940-44 ..	94⅞	4 15 0	4 19 6
Conversion 3½% Loan 1961	74$^{1}/_{16}$	4 14 6	—
Local Loans 3% Stock 1921 or after ..	62¼	4 16 0	—
Bank Stock	248½	4 16 6	—
India 4½% 1950-55	92¼	4 17 6	5 2 0
India 3½%	68⅜	5 2 0	—
India 3%	58¾	5 2 0	—
Sudan 4½% 1939-73	93⅜	4 16 0	5 0 0
Sudan 4% 1974	85¾	4 13 0	4 17 6
Transvaal Government 3% Guaranteed 1923-53 (Estimated life 19 years) ..	79¾xd	3 15 6	4 14 0
Colonial Securities.			
Canada 3% 1938	84½	3 11 6	4 19 0
Cape of Good Hope 4% 1916-36 ..	91⅜	4 8 0	5 3 0
Cape of Good Hope 3½% 1929-49 ..	79¾	4 8 0	5 1 0
Commonwealth of Australia 5% 1945-75	98	5 2 6	5 3 0
Gold Coast 4½% 1956	94⅞	4 15 0	4 17 0
Jamaica 4½% 1941-71	90¼	4 19 6	5 0 0
Natal 4% 1937	92	4 7 0	4 19 0
New South Wales 4½% 1935-45 ..	90¼	5 1 0	5 7 6
New South Wales 5% 1945-65	97½	5 2 6	5 4 0
New Zealand 4½% 1945	94⅞	4 15 0	4 19 0
New Zealand 4% 1929	95⅝xd	4 3 6	5 8 0
Queensland 3½% 1945	76	4 12 0	5 10 0
South Africa 4% 1943-63	85½	4 13 6	4 17 6
S. Australia 3½% 1926-36	85½	4 2 0	5 8 0
Tasmania 3½% 1920-40	83¾	4 3 6	5 4 0
Victoria 4% 1940-60	81½	4 18 0	5 1 0
W. Australia 4½% 1935-65	89¾	5 0 6	5 3 6
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	62¾	4 16 0	—
Bristol 3½% 1925-65	75	4 13 0	5 0 0
Cardiff 3½% 1935	89½	3 18 6	5 0 6
Croydon 3% 1940-60	66	4 11 0	5 2 0
Glasgow 2½% 1925-40	76½	3 6 0	4 16 0
Hull 3½% 1925-40	75½	4 13 0	5 0 6
Liverpool 3½% on or after 1942 at option of Corpn.	72¾	4 16 0	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	52	4 16 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	61⅝	4 17 0	—
Manchester 3% on or after 1941 ..	63¼	4 15 0	—
Metropolitan Water Board 3% 'A' 1963-2003	61¾	4 17 0	4 17 6
Metropolitan Water Board 3% 'B' 1934-2003	62½	4 16 0	4 17 0
Middlesex C. C. 3½% 1927-47	79¾	4 8 0	5 0 0
Newcastle 3½% irredeemable	71⅞	4 18 0	—
Nottingham 3% irredeemable	61½xd	4 17 6	—
Plymouth 3% 1920-60	66	4 11 0	5 1 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture ..	81½	4 18 0	—
Gt. Western Rly. 5% Rent Charge ..	99½	5 0 6	—
Gt. Western Rly. 5% Preference ..	94⅞	5 5 6	—
L. North Eastern Rly. 4% Debenture	78	5 2 6	—
L. North Eastern Rly. 4% Guaranteed	73⅞	5 8 6	—
L. North Eastern Rly. 4% 1st Preference	67	5 19 6	—
L. Mid. & Scot. Rly. 4% Debenture ..	79½	5 1 0	—
L. Mid. & Scot. Rly. 4% Guaranteed ..	77½	5 3 6	—
L. Mid. & Scot. Rly. 4% Preference ..	73	5 9 6	—
Southern Railway 4% Debenture ..	80½	4 19 6	—
Southern Railway 5% Guaranteed ..	98½	5 1 6	—
Southern Railway 5% Preference ..	94⅞	5 5 6	—